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Vol I

TRANSCRIPT OF RECORD

---

Supreme Court of the United States

OCTOBER TERM, 1931

---

No. 19

CONSOLIDATED EDISON COMPANY OF NEW YORK,  
INC., AND ITS AFFILIATED COMPANIES, ET AL.,  
PETITIONERS,

VS.

NATIONAL LABOR RELATIONS BOARD ET AL

---

No. 25

INTERNATIONAL BROTHERHOOD OF ELECTRICAL  
WORKERS, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION  
NO. 8-825, ET AL., PETITIONERS,

VS.

NATIONAL LABOR RELATIONS BOARD ET AL

---

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SECOND CIRCUIT

---

PETITIONS FOR CERTIORARI FILED | APRIL 2, 1932.  
| APRIL 12, 1932.

CERTIORARI GRANTED MAY 14, 1932.





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# WITNESSES FOR THE BOARD

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|---------------------------|---------------|-----------------------|
| <b>HAROLD STRAUSS:</b>    |               |                       |
| Direct .....              | 42            | 167                   |
| Cross .....               | 901           | 804                   |
| Redirect .....            | 935           | 831                   |
| Recross .....             | 948           | 841                   |
| <b>CHARLES A. SMITH:</b>  |               |                       |
| Direct .....              | 213           | 298                   |
| Cross .....               | 225           | 307                   |
| <b>FOSTER STRAINER:</b>   |               |                       |
| Direct .....              | 229           | 310                   |
| Cross .....               | 261           | 332                   |
| Redirect .....            | 267           | 337                   |
| <b>STEPHEN L. SOLOSY:</b> |               |                       |
| Direct .....              | 271           | 340                   |
| Cross .....               | 310           | 368                   |
| Redirect .....            | 350           | 395                   |
| Recross .....             | 350           | 395                   |
| Redirect .....            | 359           | 401                   |
| Recross .....             | 360           | 402                   |
| <b>MARTIN A. WERSING:</b> |               |                       |
| Direct .....              | 369           | 410                   |
| Cross .....               | 477           | 492                   |
| Redirect .....            | 511           | 516                   |
| <b>J. GREULICH:</b>       |               |                       |
| Direct .....              | 523           | 526                   |
| Cross .....               | 584           | 571                   |
| <b>WM. J. KENNEDY:</b>    |               |                       |
| Direct .....              | 600           | 583                   |
| Cross .....               | 693           | 653                   |
| Redirect .....            | 709           | 666                   |
| Recross .....             | 710           | 667                   |
| <b>JOHN F. EMLER:</b>     |               |                       |
| Direct .....              | 714           | 671                   |
| Cross .....               | 751           | 697                   |
| <b>MICHAEL A. WAGNER:</b> |               |                       |
| Direct .....              | 759           | 703                   |
| Cross .....               | 788           | 723                   |
| Redirect .....            | 795           | 728                   |
| <b>GUSTA HARDING:</b>     |               |                       |
| Direct .....              | 796           | 729                   |
| Cross .....               | 883           | 791                   |

*Note:* The Transcript of Testimony as hereinafter printed shows the numbering of the pages of the Stenographic Minutes, as well as the numbering of the printed pages. The pages of the Stenographic Minutes are referred to as S. M.; the pages of the printed record as R.

Witnesses for the Board (Continued)

|                           | S. M.<br>Page | Printed<br>Page |
|---------------------------|---------------|-----------------|
| <b>JOHN SYMON:</b>        |               |                 |
| Direct .....              | 819           | 745             |
| Cross .....               | 896           | 800             |
| <b>DAVID M. MCCARTHY:</b> |               |                 |
| Direct .....              | 825           | 749             |
| Cross .....               | 857           | 772             |
| Redirect .....            | 874           | 783             |
| Recross .....             | 882           | 790             |
| <b>ARTHUR CURRIE JOY:</b> |               |                 |
| Direct .....              | 953           | 845             |
| Cross .....               | 1011          | 890             |
| Redirect .....            | 1025          | 901             |
| Recross .....             | 1031          | 906             |
| Redirect .....            | 1051          | 921             |
| <b>ROBERT MCCORMICK:</b>  |               |                 |
| Direct .....              | 1051          | 921             |
| Cross .....               | 1066          | 933             |
| Redirect .....            | 1078          | 941             |
| <b>EDWARD GIBBON:</b>     |               |                 |
| Direct .....              | 1079          | 942             |
| Cross .....               | 1106          | 962             |
| <b>JOHN YOUNG:</b>        |               |                 |
| Direct .....              | 1114          | 967             |
| Cross .....               | 1134          | 982             |
| <b>HARRY SPALDING:</b>    |               |                 |
| Direct .....              | 1146          | 991             |
| Cross .....               | 1168          | 1006            |
| Redirect .....            | 1177          | 1013            |
| Recross .....             | 1179          | 1014            |
| <b>WM. J. BALCH:</b>      |               |                 |
| Direct .....              | 1186          | 1020            |
| Cross .....               | 1194          | 1025            |
| <b>FRANK J. BRADY:</b>    |               |                 |
| Direct .....              | 1200          | 1029            |
| Cross .....               | 1214          | 1039            |
| <b>ELEANOR MISBACH:</b>   |               |                 |
| Direct .....              | 1224          | 1047            |
| Cross .....               | 1237          | 1055            |
| Redirect .....            | 1246          | 1062            |
| <b>HARRY N. CROWELL:</b>  |               |                 |
| Direct .....              | 1249          | 1065            |
| Cross .....               | 1262          | 1074            |



## Witnesses for the Board (Continued)

|                          | S. M.<br>Page | R.<br>Printed<br>Page |
|--------------------------|---------------|-----------------------|
| <b>EDWARD SHEDLOCK:</b>  |               |                       |
| Direct .....             | 1265          | 1076                  |
| Cross .....              | 1275          | 1083                  |
| <b>PHILEMON EWING:</b>   |               |                       |
| Direct .....             | 1280          | 1086                  |
| Cross .....              | 1315          | 1113                  |
| Redirect .....           | 1336          | 1127                  |
| Recross .....            | 1337          | 1129                  |
| <b>TERRENCE MCGOWAN:</b> |               |                       |
| Direct .....             | 1338          | 1129                  |
| Cross .....              | 1347          | 1135                  |
| <b>FRANKLIN DE LUDE:</b> |               |                       |
| Direct .....             | 1351          | 1138                  |
| Cross .....              | 1368          | 1154                  |
| Redirect .....           | 1379          | 1159                  |
| <b>WM. CHANDLEY:</b>     |               |                       |
| Direct .....             | 1384          | 1163                  |
| Cross .....              | 1390          | 1167                  |
| <b>WM. F. O'BRIEN:</b>   |               |                       |
| Direct .....             | 1392          | 1169                  |
| Cross .....              | 1403          | 1177                  |
| <b>F. W. LOHNES:</b>     |               |                       |
| Direct .....             | 1405          | 1178                  |
| Cross .....              | 1409          | 1182                  |

WITNESSES FOR RESPONDENT COMPANIES  
(PETITIONERS HEREIN)

|                           |      |      |
|---------------------------|------|------|
| <b>FLOYD L. CARLISLE:</b> |      |      |
| Direct .....              | 1433 | 1202 |
| Cross .....               | 1449 | 1213 |
| Redirect .....            | 1492 | 1246 |
| Recross .....             | 1496 | 1249 |
| Redirect .....            | 1498 | 1250 |
| <b>HAROLD C. DEAN:</b>    |      |      |
| Direct .....              | 1502 | 1254 |
| Cross .....               | 1523 | 1269 |
| Redirect .....            | 1575 | 1308 |
| Recross .....             | 1575 | 1308 |

*Note:* The Transcript of Testimony as hereinafter printed shows the numbering of the pages of the *Stenographic Minutes*, as well as the numbering of the *printed* pages. The pages of the *Stenographic Minutes* are referred to as S. M.; the pages of the printed record as R.



## BOARD'S EXHIBITS

| Exhibit<br>No. |   | Marked for<br>Identification |                 | In evidence   |                 | Printed<br>at<br>Page |
|----------------|---|------------------------------|-----------------|---------------|-----------------|-----------------------|
|                |   | S. M.<br>Page                | Printed<br>Page | S. M.<br>Page | Printed<br>Page |                       |
| 1              | Charge filed with the Board by United Electrical and Radio Workers affiliated with the Committee for Industrial Organization, dated May 5, 1937 .....   |                              |                 | 4             | 135             | 4                     |
|                | Complaint issued by the Board, by its Regional Director for the Second Region, dated May 12, 1937 (with the various subsequent amendments shown) .....  |                              |                 | 4             | 135             | 7                     |
|                | Acknowledgments and proofs of service of the complaint and notice of hearing.....   |                              |                 | 4             | 135             | 17                    |
|                | Amended notice of hearing, dated May 25, 1937, issued by the Board.....   |                              |                 | 4             | 135             | 34                    |
|                | Affidavit of service of amended notice of hearing .....   |                              |                 | 4             | 135             | 35                    |
| 2              | Stipulation of facts for the determination of the question of jurisdiction .....  |                              |                 | 23            | 151             | 1318                  |
| 3              | Pamphlet issued by the Consolidated Edison Company of New York, Inc., in August, 1936, entitled "Serving New York, electricity, gas, steam" (not printed; may be referred to in the Transcript of Record filed).....  |                              |                 | 24            | 152             |                       |
| 4              | Copy of an Order of the Board, dated June 2, 1937, denying the petition and motion of the respondent Companies for a prior and separate hearing as to jurisdiction and for dismissal of the complaint for want of jurisdiction .....  |                              |                 | 41            | 166             | 38                    |
| 5              | Notice of motion by the Board, served on respondent Companies on June 9, 1937, to amend its complaint by adding the name of Stephen D. Slosky as one of the persons named in Paragraph 19 of the original complaint as having been discharged by respondent Companies ..... |                              |                 | 41            | 166             | 40                    |
| 6              | One side of an application or pledge card of the International Brotherhood of Electrical Workers (not printed; may be referred to in the Transcript of Record filed).....   | 177                          | 270             | 179           | 271             |                       |

**Notes:** By stipulation of the parties and Order of this Court, various of the exhibits are not printed, but may be referred to, by the Court or by the parties, in the Transcript of Record as certified and filed by the Board.

# Board's Exhibits (Continued)

| Exhibit<br>No. |   | Marked for<br>Identification |                 | In evidence   |                 | Printed<br>at<br>Page |
|----------------|---|------------------------------|-----------------|---------------|-----------------|-----------------------|
|                |   | S. M.<br>Page                | Printed<br>Page | S. M.<br>Page | Printed<br>Page |                       |
| 7              | The other half of a pledge card of the International Brotherhood of Electrical Workers (not printed; may be referred to in the Transcript of Record filed).....   | 178                          | 270             | 179           | 271             |                       |
| 8              | Copy of the Constitution and By-laws of the United Electrical and Radio Workers of America (not printed; may be referred to in the Transcript of Record filed) .....  |                              |                 | 373           | 413             |                       |
| 9              | Constitution of the International Brotherhood of Electrical Workers affiliated with the American Federation of Labor (not printed; may be referred to in the Transcript of Record filed) .....  | 382                          | 420             | 1500          | 1252            |                       |
| 10             | Letter dated November 1, 1934, from Mr. Wersing to Mr. Kennedy .....  |                              |                 | 714           | 670             | 1390                  |
| 11             | Copy of the Employees' Representation Plan of The New York Edison Company, Inc. (not printed; may be referred to in the Transcript of Record filed).....  |                              |                 | 879           | 787             |                       |
| 12             | Reply dated January 4, 1937, of Mr. Edward P. Prezzano to Mr. Straub's letter (Respondents' Exhibit No. 15) .....   |                              |                 | 945<br>1500   | 839<br>1252     | 1391                  |
| 13             | (Produced at the request of the Board) Letter from Mr. D. W. Tracy, President of the International Brotherhood of Electrical Workers, to Mr. Floyd L. Carlisle, dated April 16, 1937 .....  |                              |                 | 987<br>1500   | 871<br>1252     | 1392                  |
| 13 (a)         | (Produced at the request of the Board) Reply by Mr. Carlisle to Mr. Tracy, dated April 20, 1937 .....   |                              |                 | 987<br>1500   | 871<br>1252     | 1393                  |
| 14             | (Produced at the request of the Board) Memorandum of Agreement between Consolidated Edison Company of New York, Inc., and International Brotherhood of Electrical Workers through its Local Union B829, dated June 15, 1937 .....             | 987                          | 871             | 1448          | 1213            | 1394                  |
| 15             | Letter from Mr. D. W. Tracy to Mr. Ganley, dated April 21, 1937 .....   |                              |                 | 1027          | 903             | 1406                  |
| 16             | Notice by employees of Westchester Lighting Company that the International Brotherhood of Electrical Workers Local B832 had become the bargaining agent for its members among the employees of Westchester Lighting Company (not printed; may |                              |                 |               |                 |                       |

## Board's Exhibits (Continued)

| Exhibit<br>No.   |   | Marked for<br>Identification |                 | In evidence   |                 | Printed<br>at<br>Page |
|------------------|---|------------------------------|-----------------|---------------|-----------------|-----------------------|
|                  |   | S. M.<br>Page                | Printed<br>Page | S. M.<br>Page | Printed<br>Page |                       |
| 17               | (Produced at the request of the Board)<br>Photostat copy of the employment record of Eleanor Misbach for the months of April and May, 1937 (not printed; may be referred to in the Transcript of Record filed) .....                                      | 1229                         | 1050            | 1230          | 1051            |                       |
| 18 (a), (b), (c) | (Produced at the request of the Board) Photostat copies of employment record of Eleanor Misbach for October and December, 1936, and February, 1937 (not printed; may be referred to in the Transcript of Record filed) .....                              |                              |                 | 1236          | 1055            |                       |
| 19 (1)           | (Produced at the request of the Board) Foreman's daily report and attached work order of May 12, 1937, as to A. Martini (not printed; may be referred to in the Transcript of Record filed) .....   |                              |                 | 1249          | 1065            |                       |
| 19 (2)           | (Produced at the request of the Board) List of the Delegates and Officers of the Employees' Representation Plan, with their employment records, showing any overtime (not printed; may be referred to in the Transcript of Record filed) .....            |                              |                 | 1412          | 1184            |                       |
| 20               | (Produced at the request of the Board) Summary of charges and accounts covering "general welfare—collective bargaining" and "employees' representation plan" accounts—1934-1937 (not printed; may be referred to in the Transcript of Record filed) ..... |                              |                 | 1433          | 1202            |                       |

### EXHIBITS OF RESPONDENT COMPANIES (PETITIONERS HEREIN)

- 1 Certified copy of judgment roll filed June 2, 1937, in *Consolidated Edison Company of New York, Inc., et al., v. Lamar Hardy, et al.*, District Court of the United States for the Southern District of New York, Index No. *Eq. 81-377* (not printed; may be referred to in the Transcript of Record filed)

34 160

*Note:* By stipulation of the parties and Order of this Court, various of the exhibits are not printed, but may be referred to, by the Court or by the parties, in the Transcript of Record as certified and filed by the Board.



## Respondents' Exhibits (Continued)

| Exhibit<br>No. |  | Marked for<br>Identification |                 | In evidence   |                 | Printed<br>at<br>Page |
|----------------|--|------------------------------|-----------------|---------------|-----------------|-----------------------|
|                |  | S. M.<br>Page                | Printed<br>Page | S. M.<br>Page | Printed<br>Page |                       |
|                | Praecipe .....   |                              |                 | 34            | 160             |                       |
|                | Subpoena and Complaint .....   |                              |                 | 34            | 160             |                       |
|                | Special Appearance and Motion to<br>Dismiss .....  |                              |                 | 34            | 160             |                       |
|                | Order of January 17, 1936, with No-<br>tice of Settlement vacating service of<br>the subpoena in equity upon certain<br>defendants .....   |                              |                 | 34            | 160             |                       |
|                | Stipulation and Order <i>pro confesso</i> ,<br>dated January 29, 1936 .....  |                              |                 | 34            | 160             |                       |
|                | Order <i>pro confesso</i> , dated March 10,<br>1936 .....  |                              |                 | 34            | 160             |                       |
|                | Order of April 14, 1936, by Honorable<br>Henry W. Goddard, United States Dis-<br>trict Court, substituting the name of<br>Consolidated Edison Company of New<br>York, Inc., in place and stead of the<br>name "Consolidated Gas Company of<br>New York" (with affidavit on which<br>Order was granted) ..... |                              |                 | 34            | 160             |                       |
|                | Decree <i>pro confesso</i> , dated October 23,<br>1936 .....   |                              |                 | 34            | 160             |                       |
|                | (The above documents from the judg-<br>ment-roll are not printed herein, but<br>may be referred to in the Transcript<br>of Record filed.)  |                              |                 |               |                 |                       |
| 2              | Certified copy of the Opinion of Caffey,<br><i>U.S.D.J.</i> , in entering the above judgment...  |                              |                 | 34            | 160             | 1408                  |
| 3              | Notice of motion by respondent Compa-<br>nies, with affidavit, dated May 17, 1937,<br>for prior and separate hearing as to juris-<br>diction and to dismiss complaint and<br>charge for want of jurisdiction (Part of<br>Board's Exhibit No. 1) .....  |                              |                 |               |                 | 19                    |
| 4              | (Produced at the request of the Board)<br>Employee rating card of Mr. William J.<br>Kennedy (not printed; may be referred to<br>in the Transcript of Record filed) .....   | 714                          | 670             | 1523          | 1269            |                       |
| 5              | (Produced at the request of the Board)<br>Letter of Mr. John F. Emler to Mr. Frank<br>W. Smith, dated November 20, 1936 (not<br>printed; may be referred to in the Transcript<br>of Record filed) .....  |                              |                 | 756           | 701             |                       |



## Respondents' Exhibits (Continued)

| Exhibit No. |   | Marked for Identification |              | In evidence |              | Printed at Page |
|-------------|---|---------------------------|--------------|-------------|--------------|-----------------|
|             |   | S. M. Page                | Printed Page | S. M. Page  | Printed Page |                 |
| 6           | (Produced at the request of the Board) Employee rating card of John F. Emler (not printed; may be referred to in the Transcript of Record filed) .....  | 756                       | 701          | 1523        | 1269         |                 |
| 7           | Verified answer on behalf of the respondent Companies to the complaint of the Board as amended as to June 14, 1937....  | 901                       | 804          | 1501        | 1253         | 42              |
| 8           | Copy of Employees' Representation Plan adopted by employees of The Bronx Gas and Electric Company (not printed; may be referred to in the Transcript of Record filed) .....   | 912                       | 812          | 931         | 827          |                 |
| 9 (1)       | Letter, dated July 15, 1936, from Harry J. Straub, Chairman, Third General Council of the Employees' Representation Plan of The Bronx Gas and Electric Company, to Mr. E. P. Prezanno (not printed; may be referred to in the Transcript of Record filed) ..... |                           |              | 926         | 823          |                 |
| 9 (2)       | Mimeographed circular requesting a vote by employees of The Bronx Gas and Electric Company on a plan of electing representatives for collective bargaining (not printed; may be referred to in the Transcript of Record filed) .....                            | 920                       | 826          | 930         | 826          |                 |
| 10          | Printed communication to the employees of The Bronx Gas and Electric Company, dated April 11, 1934, accompanying copy of the Plan (Exhibit No. 8) (not printed; may be referred to in the Transcript of Record filed) .....                                     |                           |              | 931         | 827          |                 |
| 11          | Printed letter on the letter-head of The Bronx Gas and Electric Company, dated April 11, 1934 (not printed; may be referred to in the Transcript of Record filed) .....   | 931                       | 828          | 1500        | 1252         |                 |
| 12          | Form of ballot used by employees in electing tellers to conduct their vote on April 17, 1934 (not printed; may be referred to in the Transcript of Record filed) .....  |                           |              | 932         | 828          |                 |
| 13          | Form of ballot containing propositions voted on by the employees in the election of April 17, 1934 (not printed; may be referred to in the Transcript of Record filed) .....  |                           |              | 932         | 829          |                 |

# **Respondents' Exhibits (Continued)**

| Exhibit<br>No. |   | Marked for<br>Identification |                 | In evidence   |                 | Printed<br>at<br>Page |
|----------------|---|------------------------------|-----------------|---------------|-----------------|-----------------------|
|                |   | S. M.<br>Page                | Printed<br>Page | S. M.<br>Page | Printed<br>Page |                       |
| 14             | Enrollment blank for enrollment of employees to vote and take part in the nomination and election of representatives under the Employees' Representation Plan (not printed; may be referred to in the Transcript of Record filed) .....   | 934                          | 830             |               |                 |                       |
| 15             | Letter of Mr. Harry J. Straub to Mr. Edward P. Prezzano, President of the Westchester Lighting Company and The Bronx Gas and Electric Company .....   |                              |                 | 935           | 831             | 1416                  |
| 16             | Membership of employees in the Local Unions of the International Brotherhood of Electrical Workers having collective bargaining contracts with Companies of the Consolidated Edison Company group of Companies .....  |                              |                 | 1448          | 1212            | 1418                  |
| 17             | (Produced at the request of the Board) Memorandum of Agreement between Consolidated Edison Company of New York, Inc., and the International Brotherhood of Electrical Workers, and its Local Union No. B830 (gas employees), dated June 15, 1937 .....  | 1470                         | 1229            | 1471          | 1230            | 1419                  |
| 18             | (Produced at the request of the Board) Memorandum of Agreement between Consolidated Edison Company of New York, Inc., and the International Brotherhood of Electrical Workers, and its Local Union No. B829 (electric employees), dated June 15, 1937 (printed as Board's Exhibit No. 14) ..... | 1470                         | 1229            | 1471          | 1230            | 1394                  |
| 19*            | (Produced at the request of the Board) Memorandum of Agreement between Brooklyn Edison Company, Inc., and the International Brotherhood of Electrical Workers, and its Local Union No. B825, dated May 28, 1937 (not printed; may be referred to in the Transcript of Record filed) .....       | 1470                         | 1229            | 1471          | 1230            |                       |
| 20*            | (Produced at the request of the Board) Memorandum of Agreement between New York and Queens Electric Light and Power Company and the International Brotherhood of Electrical Workers, and  |                              |                 |               |                 |                       |

\* Respondents' Exhibits Nos. 17, 18, 19, 20, 21 and 22 are generally similar in form, with variances as to particular Companies and services; for form and substantial contents, see Exhibit No. 17 as printed.

# xi **Respondents' Exhibits (Continued)**

| Exhibit No. | Marked for Identification  |              | In evidence |              | Printed at Page |
|-------------|--|--------------|-------------|--------------|-----------------|
|             | S. M. Page   | Printed Page | S. M. Page  | Printed Page |                 |
|             | its Local Union No. B839, dated June 1, 1937 (not printed; may be referred to in the Transcript of Record filed) .....   |              |             |              |                 |
|             | 1470   | 1229         | 1471        | 1230         |                 |
| 21*         | (Produced at the request of the Board) Memorandum of Agreement between Westchester Lighting Company and The Yonkers Electric Light and Power Company and the International Brotherhood of Electrical Workers, and its Local Union No. B832, dated May 28, 1937 (not printed; may be referred to in the Transcript of Record filed) ..... |              |             |              |                 |
|             | 1471   | 1229         | 1471        | 1230         |                 |
| 22*         | (Produced at the request of the Board) Memorandum of Agreement between New York Steam Corporation and the International Brotherhood of Electrical Workers, and its Local Union No. B826, dated June 16, 1937 (not printed; may be referred to in the Transcript of Record filed) .....   |              |             |              |                 |
|             | 1471   | 1229         | 1471        | 1230         |                 |
| 23          | (Produced at the request of the Board) Memorandum of Agreement between the International Electrical Workers Union and its Local Union No. 3 (Inside Workers), and The New York Edison Company, dated January 29, 1924 (not printed; may be referred to in the Transcript of Record filed) .....  |              |             |              |                 |
|             |  |              | 1495        | 1248         |                 |
| 24          | Pamphlet entitled "A Call for Special Vote by All Employees of The New York Edison Company and The United Electric Light and Power Company," to be held on November 22, 1933, with copy of Plan for Collective Bargaining Through Employee Representation .....  |              |             |              |                 |
|             |  |              | 1502        | 1254         | 1431            |
| 25          | Letter dated June 28, 1937, to the National Labor Relations Board, from counsel for the respondent Companies .....   |              |             |              |                 |
|             |  |              | 1577        | 1309         | 1463            |
| (a)         | Reply by the National Labor Relations Board, dated July 2, 1937, to the letter of June 28, 1937, from counsel for the respondent Companies .....   |              |             |              |                 |
|             |  |              | 1577        | 1309         | 1467            |

\* Respondents' Exhibits Nos. 17, 18, 19, 20, 21 and 22 are generally similar in form, with variances as to particular Companies and services; for form and substantial contents, see Exhibit No. 17 as printed.



# INDEX

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1

**Certificate of the National Labor Relations Board  
as to Transcript**

**IN THE  
United States Circuit Court of Appeals  
For the Second Circuit**

**OCTOBER TERM, 1937**

2

**CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC., and its affiliated  
Companies, et al.,**

*Petitioners,*

*v.*

**NATIONAL LABOR RELATIONS BOARD,  
*Respondent.***

No. ....

3

**CERTIFICATE OF THE NATIONAL LABOR  
RELATIONS BOARD**

The National Labor Relations Board, by its Assistant Secretary, duly authorized by Section 1 of Article VI of the Rules and Regulations of the National Labor Relations Board, series 1 as amended, effective April 28, 1936, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled "In the Matter of Consolidated Edison Company of New York, Inc., and its affiliated Companies Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Light-

**Certificate of the National Labor Relations Board as to  
Transcript**

ing Company, The Yeakern Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, and United Electrical and Radio Workers of America, affiliated with the Committee for Industrial Organization," the same being Case No. C-245 before said Board, such transcript including the pleadings, testimony, and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Copy of charge filed by the United Electrical and Radio Workers of America, and sworn to on May 5, 1937.

2. Copy of complaint and notice of hearing issued by the National Labor Relations Board on May 12, 1937.

3. Copy of notice of special appearance for the purpose of a motion to dismiss the complaint, together with affidavit in support of motion, dated May 17, 1937.

4. Copy of amended notice of hearing dated May 25, 1937, changing date of hearing from June 1, 1937 to June 3, 1937.

5. Copy of order designating Robert M. Gates, Trial Examiner, dated May 26, 1937.

6. Copy of order denying respondent's request for hearing on motion to dismiss the complaint, dated June 2, 1937.

7. Copy of notice of motion to amend complaint issued by the National Labor Relations Board.

3

7

***Certificate of the National Labor Relations Board as to  
Transcript***

8. Copy of answer of respondents to complaint as amended June 14, 1937, verified June 16, 1937.

Documents listed hereinabove under items 1-8, inclusive, are contained in the Exhibits and included under the following item:

9. Stenographic transcript of the testimony before Robert M. Gates, Trial Examiner of the National Labor Relations Board, on June 3, 10, 11, 14, 15, 16, 17, 23, 24, and July 6, 1937, including all exhibits introduced in evidence. 8

10. Copy of order transferring proceeding to National Labor Relations Board, dated September 29, 1937.

11. Copy of decision, findings of fact, conclusions of law, and order issued by the National Labor Relations Board on November 10, 1937, together with affidavit of service and United States Post Office return receipts thereof.

IN TESTIMONY WHEREOF, the Assistant Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set her hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 26th day of November, 1937. 9

B. M. STERN, Assistant-Secretary,  
NATIONAL LABOR RELATIONS BOARD.

SEAL



10 Charge Filed by United Electrical and Radio Workers Affiliated  
with the Committee for Industrial Organization, sworn to  
May 5, 1937

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS  
BOARD

SECOND REGION

11 IN THE MATTER

of

CONSOLIDATED EDISON COMPANY OF  
New York, Inc., and its affiliated  
companies

and

UNITED ELECTRICAL AND RADIO WORK-  
ERS OF AMERICA, affiliated with the  
Committee for Industrial Organi-  
zation.

12 CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Consolidated Edison Company of New York, Inc. and its affiliated companies, 4 Irving Place, New York City, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subsections (1) and (2) (3) of said Act, in that

(1) on or about November 29, 1935 the New York and Queens Electric Light and Power Company a subsidiary of Consolidated Edison Company of New York, Inc. discharged Martin A. Wersing, Julius A. Greulich,



**Charge Filed by United Electrical and Radio Workers  
Affiliated with the Committee for Industrial Organiza-  
tion, sworn to May 5, 1937**

and Michael A. Wagner because of their membership in and activity on behalf of a labor organization of utility employees. On or about June 19, 1936, the New York and Queens Electric Light and Power Company, a subsidiary of Consolidated Edison Company of New York, Inc., discharged William J. Kennedy and John J. Emler because of their membership in and activity in behalf of a labor organization of utility employees.

(2) The Consolidated Edison Company of New York, Inc. and its controlled and directed affiliates have since March 1, 1937 interfered with the right of its employees to form, join or assist labor organizations of their own choosing and to engage in other concerted activities by contributing financial and other support to the International Brotherhood of Electrical Workers by allowing I. B. E. W. meetings to be held during working hours and on company premises, by allowing supervisors, foremen, and other employees of the company during working hours to solicit membership in the I. B. E. W. by giving foremen, supervisors, and other employees overtime allowances while they were engaged in coercing employees of the company to join the I. B. E. W., by persuading and coercing employees of the company under threat of discharge to disaffiliate from labor organizations of their own choosing and to join the I. B. E. W.

(3) The Consolidated Edison Company of New York, Inc. and its controlled and directed affiliates have since July 5, 1935 and still do employ industrial spies to ferret out union activity of its employees for the purpose of discriminating against such employees, thereby discouraging membership in labor organizations and interfering with the right of employees to form, join or assist labor organizations.

6

**12 Charge Filed by United Electrical and Radio Workers  
Affiliated with the Committee for Industrial Organiza-  
tion, sworn to May 5, 1937**

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

**13**

United Electrical and Radio Workers of America,  
Loc. 1212 affiliated with the Committee for Industrial Organization, 3 Albee Street, Brooklyn, N. Y.  
(Cumberland 6-7444.)

by: **MARTIN A. WERSING,**  
President, Local 1212.

(Sgd) **MARTIN A. WERSING,**

Subscribed and sworn to before }  
me this 5 day of May, 1937. }

**14** **ALBERT L. PAGER,**  
Notary Public.

New York County No. 8.

New York Co. Register's No. 8 F-195.

My Commission expires March 30, 1938.

(Seal)

Complaint and Notice of Hearing Issued by National Labor  
Relations Board on May 12, 1937

19

United States of America  
Before the  
**National Labor Relations Board**  
**Second Region**

IN THE MATTER  
of

CONSOLIDATED EDISON COMPANY OF NEW  
YORK, INC., and its affiliated Companies,  
BROOKLYN EDISON COMPANY, INC.,  
NEW YORK & QUEENS ELECTRIC LIGHT  
& POWER COMPANY,  
WESTCHESTER LIGHTING COMPANY,  
THE YONKERS ELECTRIC LIGHT AND  
POWER COMPANY,  
NEW YORK STEAM CORPORATION,  
CONSOLIDATED TELEGRAPH & ELECTRICAL  
SUBWAY COMPANY,

*Respondents,*

and

UNITED ELECTRICAL AND RADIO WORKERS  
OF AMERICA, affiliated with the COMMITTEE  
FOR INDUSTRIAL ORGANIZATION.

20

21

**Complaint**

It having been charged by the United Electrical and  
Radio Workers of America, affiliated with the Committee

NOTE: The text shows the Complaint as first filed and served. The  
various amendments allowed from time to time during the hearings and  
at their close are shown as foot-notes.



**Complaint and Notice of Hearing Issued by National  
Labor Relations Board on May 12, 1937**

for Industrial Organization, that the Consolidated Edison Company of New York, Inc., and its affiliated companies, Brooklyn Edison Company, Inc., New York & Queens Electric Light & Power Company; Westchester Lighting Company; The Yonkers Electric Light and Power Company; New York Steam Corporation, and the Consolidated Telegraph & Electrical Subway Company, hereinafter called the respondents, have been engaged in and are now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board, by the Regional Director for the Second Region, as agent of the National Labor Relations Board designated by National Labor Relations Board Rules and Regulations, Series 1, as amended, Article IV, Section 1, hereby alleges the following:

1. The Consolidated Edison Company of New York, Inc., is and has been since March 23, 1936, a corporation organized under and existing by virtue of the laws of the State of New York, having its principal office and place of business in the city, county, and state of New York and is now and has been continuously engaged in said city in the manufacture, distribution, and sale of electricity, gas and steam.

2. The Consolidated Edison Company of New York, Inc., was until March 23, 1936, known as Consolidated Gas Company of New York, a corporation organized on or about November 10, 1884, and existing by virtue of the laws of the State of New York, having its office and principal place of business in the city, county, and state of New York.

3. The Brooklyn Edison Company, Inc., is and has been since December 21, 1918, a corporation organized under and existing by virtue of the laws of the state of New York, having its principal office and place of

9

25

***Complaint and Notice of Hearing Issued by National  
Labor Relations Board on May 12, 1937***

business in the county of Kings, city and state of New York, more than 98 per centum of the common stock of which is owned by Consolidated Edison Company of New York, Inc.

4. The New York & Queens Electric Light & Power Company, is and has been since July 21, 1900, a corporation organized under and existing by virtue of the laws of the state of New York, having its principal office and place of business in the county of Queens, city and state of New York, 98 per centum of the common stock of which is owned by Consolidated Edison Company of New York, Inc. 26

5. The Westchester Lighting Company, is and has been since November 5, 1900, a corporation organized under and existing by virtue of the laws of the state of New York, having its principal office and place of business in the county of Westchester, state of New York, all of the common stock of which is owned by the Consolidated Edison Company of New York, Inc.

6. The Yonkers Electric Light and Power Company, is and has been since May 24, 1892, a corporation organized under and existing by virtue of the laws of the state of New York, having its principal office and place of business in the county of Westchester, state of New York, all of the common stock of which is owned by the Consolidated Edison Company of New York, Inc. 27

7. The New York Steam Corporation, is and has been since July 15, 1921, a corporation organized under and existing by virtue of the laws of the state of New York, having its principal office and place of business in the city, county and state of New York, 58 per centum of the common stock of which is owned by the Consolidated Edison Company of New York, Inc.

8. The Consolidated Telegraph & Electrical Subway

**Complaint and Notice of Hearing Issued by National  
Labor Relations Board on May 12, 1937**

Company, is and has been since December 29, 1885, a corporation organized under and existing by virtue of the laws of the state of New York, having its principal office and place of business in the city, county and state of New York, 99 per centum of the common stock of which is owned by the Consolidated Edison Company of New York, Inc.

29 9. All of the operations of the corporations described above in paragraphs "3" to "8" inclusive, including their labor policies, are wholly directed and controlled by the Consolidated Edison Company of New York, Inc., and all of the corporations so described together with said Consolidated Edison Company of New York, Inc., form a unified and integrated system wholly controlled and directed by said Consolidated Edison Company of New York, Inc.

30 10. The respondents, jointly and severally, in the course and conduct of their business, as aforesaid, cause and have continuously caused substantially all of the coal, oil and other essential raw materials, used in the production and transmission of electricity, gas and steam, to be purchased and transported in interstate commerce from and through the states of the United States, other than the State of New York to their various plants in the city of New York.

11. The electric generating and transmission systems of the respondents are and since 1932 have been physically interconnected with the electric generating and transmission system of the Niagara Hudson Power Corporation, a corporation organized and existing under the laws of the state of New York, the electric generating and transmission system of which is in turn interconnected with electric generating and transmission systems in the Dominion of Canada, and the respondents have since 1932 been purchasing electricity from, and



*Complaint and Notice of Hearing Issued by National  
Labor Relations Board on May 12, 1937*

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selling electricity to, the Niagara Hudson Power Corporation, which in turn have been purchasing electricity from and selling electricity to electric power corporations in the Dominion of Canada, thereby the respondents buy, sell and exchange, electricity with electric power corporation in the Dominion of Canada.

12. The respondents jointly and severally cause and continuously have caused a major part of the by-products, such as coke, ammonium sulphate and coal tar, resulting from the production of electricity, gas and steam to be sold and transported in interstate commerce into and through the states of the United States other than the state of New York from their plants in the state of New York.

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13. The respondents jointly and severally sell electricity to the New York Central Railroad Company, the New York, New Haven and Hartford Railroad Company and other interstate railroad carriers, which electricity is used by said interstate railroad carriers to operate their trains and to operate facilities necessary to the operation of their interstate transportation system in interstate commerce.

33

14. The respondents jointly and severally are the sole suppliers of electric current in the City of New York (with the exception of the county of Richmond) and sell electricity to various individuals, partnerships and corporations having their offices and plants in New York City which are engaged in and constitute instrumentalities of interstate commerce and which produce or transmit radio broadcasts, telephonic communications, telegrams, newspapers and other products moving in interstate commerce.

15. The respondents jointly and severally sell electricity to various branches of the Post Office located in

**Complaint and Notice of Hearing Issued by National Labor Relations Board on May 12, 1937**

New York City and to other governmental authorities for the operation of tunnels, docks, bridges and highways, which act as arteries for the flow of interstate commerce to and from the state of New York.

16. The electricity, gas and steam sold by the respondents to the hereinabove described purchasers and the other activities of the respondents have a close, intimate and substantial relationship to trade, traffic and commerce among the several states and are an integral part of the flow of trade, traffic and commerce along the instrumentalities of interstate commerce and are an integral part of the flow of trade, traffic and commerce among the several states and with foreign countries.

17. The respondents jointly and severally by their officers and agents, while engaged in the operations hereinabove described, employ and have employed industrial spies or undercover operatives for the purpose of disclosing to the respondents the activities of their employees in and on behalf of labor organizations, thereby interfering with the right of their employees to form, join or assist labor organizations of their own choosing or to engage in concerted activities for their mutual aid and protection, and thereby have engaged in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (1), of the National Labor Relations Act.

18. The respondents jointly and severally, by their officers and agents, on or about November 29, 1935, discharged and refused to reinstate Martin A. Wersing, Julius A. Greulich and Michael A. Wagner, employees of the respondents, and each of them for the reason that they joined and assisted a labor organization known as Brotherhood of Utility Employees, Local 103, and engaged with other employees of the respondents in concerted activities for their mutual aid and protection.

*Complaint and Notice of Hearing Issued by National  
Labor Relations Board on May 12, 1937*

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19.\* The respondents jointly and severally by their officers and agents, on or about June 19, 1936, discharged and refused to reinstate William J. Kennedy and John J. Emler,\* employees of the respondents, and each of them, for the reason that they engaged with other employees of the respondents in concerted activities for their mutual aid and protection.

20.\* By their discharge of said Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy and John J. Emler,\* and each of them, as set forth above, the respondents have interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by such discharges have engaged in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act.

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\* On June 9, 1937, counsel for the National Labor Relations Board served upon counsel for the respondent Companies the following notice:

**PLEASE TAKE NOTICE:**

That the undersigned will move to amend the complaint in the above-entitled proceeding at the hearing to be conducted by the National Labor Relations Board, by a Trial Examiner, on the 10th day of June, 1937, in the following respects:

39

(1) Paragraph 19 will be amended to read as follows: "The respondents, jointly and severally, by their officers and agents on or about January 17, 1936 discharged and refused to reinstate Stephen L. Solosy; and on or about June 19, 1936 discharged and refused to reinstate William J. Kennedy and John J. Emler, employees of the respondents, and each of them, for the reason that they engaged with other employees of the respondents in concerted activities for their mutual aid and protection."

(2) Paragraph 20 will be amended to read as follows: "By their discharge of said Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John J. Emler and Stephen L. Solosy, and each of them, as set forth above, the respondents have interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by such discharges have engaged in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act."

(3) Paragraph 21 will be amended to read as follows: "By the discharge of said Martin A. Wersing, Julius A. Greulich, Michael A.



**Complaint and Notice of Hearing Issued by National Labor Relations Board on May 13, 1937**

- 21.\* By the discharge of said Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, and John J. Emler,\* and each of them, as set forth above, the respondents did discriminate and are discriminating in regard to the hire and tenure of employment of said Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy and John J. Emler,\* and each of them, and did discourage and are discouraging membership in or assistance to labor organizations, and did thereby engage in and are thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the National Labor Relations Act.

\*On June 9, 1937, counsel for the National Labor Relations Board served upon counsel for the respondent Companies the following notice:

**PLEASE TAKE NOTICE:**

That the undersigned will move to amend the complaint in the above-entitled proceeding at the hearing to be conducted by the National Labor Relations Board, by a Trial Examiner, on the 10th day of June, 1937, in the following respects:

- (1) Paragraph 19 will be amended to read as follows: "The respondents, jointly and severally, by their officers and agents on or about January 17, 1936 discharged and refused to reinstate Stephen L. Solosy; and on or about June 19, 1936 discharged and refused to reinstate William J. Kennedy and John J. Emler, employees of the respondents, and each of them, for the reason that they engaged with other employees of the respondents in concerted activities for their mutual aid and protection."

(2) Paragraph 20 will be amended to read as follows: "By their discharge of said Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John J. Emler and Stephen L. Solosy, and each of them, as set forth above, the respondents have interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by such discharges have engaged in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act."

(3) Paragraph 21 will be amended to read as follows: "By the discharge of said Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John J. Emler and Stephen L. Solosy, and each of them, as set forth above, the respondents did discriminate and are discriminating in regard to the hire and tenure of employment of said Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John J. Emler and Stephen L. Solosy, and each of them, and did discourage and are discouraging membership in or assistance to labor organizations, and did thereby engage in and are thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the National Labor Relations Act."

(Signed) DAVID A. MOSCOVITZ  
DAVID A. MOSCOVITZ  
Regional Attorney  
Second Region

On June 10, 1937, the above-stated amendments of the complaint were allowed by the Trial Examiner (S. M. 39).

*Complaint and Notice of Hearing Issued by National  
Labor Relations Board on May 12, 1937*

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22.\* The respondents jointly and severally by their officers and agents have, since April 12, 1937, interfered, and are interfering with, restraining and coercing their employees in the exercise of their right to form, join, or assist labor organizations of their own choosing and are contributing financial or other support to the International Brotherhood of Electrical Workers by (1) allowing employees of the respondents to solicit membership in said labor organization during working hours and on the respondents' property, (2) compensating such employees while engaged in such solicitation, (3) furnishing office space and other financial assistance to such solicitors; while refusing such privileges or assistance to the United Electrical Radio Workers of America, Local 1212; and by coercing their employees to join or assist the International Brotherhood of Electrical Workers, and did thereby and are thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (1) and (2) of the National Labor Relations Act.

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23.\* The activities of the respondents set forth above in paragraphs "16" to "21," inclusive, occurring in connection with the operations of respondents described above in paragraphs "1" to "16," inclusive, have a close, intimate and substantial relation to trade, traffic, and commerce among the several states and tend to lead to labor disputes hindering and obstructing commerce and the free flow of commerce.

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24.\* The aforesaid acts of the respondent enumerated above in paragraphs "16" to "21," inclusive, constitute

\* The figure "21" was permitted to be changed to "22" in each of these two paragraphs, by amendments allowed on June 14, 1937 (S. M. 364-365, 523).

**Complaint and Notice of Hearing Issued by National Labor Relations Board on May 12, 1937**

unfair labor practices affecting commerce within the meaning of Section 8, subdivision (1), (2) and (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

WHEREFORE the NATIONAL LABOR RELATIONS BOARD on the 12th day of May, 1937 issues its complaint against the Consolidated Edison Company of New York, Inc., and its affiliated companies, Brooklyn Edison Company, Inc., New York & Queens Electric Light & Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, and Consolidated Telegraph & Electrical Subway Company, respondents herein.\*

**Notice of Hearing**

PLEASE TAKE NOTICE that on the 1st day of June, 1937, at ten o'clock in the forenoon, at 45 Broadway, New York, New York, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it in accordance with its Rules and Regulations, Series I, Article IV, and Article II, Section 23, on the allegations set forth in the complaint, attached hereto, at which time and place you will have the right to appear in person or otherwise and give testimony.

You are further notified that you have the right to file with the Regional Director for the Second Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the complaint attached hereto within five (5) days from the date of service of said complaint.

Enclosed herewith for your information is a copy of Rules and Regulations, Series I, made and published by the National Labor Relations Board pursuant to authority granted by the National Labor Relations Act. Your



*Acknowledgments and Proofs of Service of the  
Complaint and Notice of Hearing*

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attention is particularly directed to Article II of said Rules and Regulations.\*

IN WITNESS WHEREOF the National Labor Relations Board has caused this, its complaint and notice of hearing, to be signed by the Regional Director for the Second Region on the twelfth day of May, 1937.

**ELINORE MOREHOUSE HERRICK,**  
*Regional Director for the Second Region,*

45 Broadway,  
New York, New York.

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*Acknowledgments and Proofs of Service of the Complaint  
and Notice of Hearing*

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

IN THE MATTER

of

CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC., and its subsid-  
iaries and affiliates

and

UNITED ELECTRICAL AND RADIO WORK-  
ERS OF AMERICA, LOCAL 1212.

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Case II-C-224

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.:

SADIE JACOBS, Stenographer, Second Region, being duly sworn deposes and says that on the 12th day of

\* Copy of Rules and Regulations not printed here; may be referred to in Transcript of Record filed.

**Acknowledgments and Proofs of Service of the  
Complaint and Notice of Hearing**

May, 1937, as agent for the National Labor Relations Board, she served upon Westchester Lighting Company at 9 South 1st Avenue, Yonkers, New York; upon Brooklyn Edison Co., Inc., at 380 Pearl Street, Brooklyn, New York; upon New York & Queens Electric Light & Power Co., at 23-19 Bridge Plaza North, Long Island City, New York; upon Consolidated Telegraph & Electric Subway, 54 Lafayette Street, New York, New York; upon Yonkers Electric Light & Power Company, 45 South Broadway, Yonkers, New York; and upon New York Steam Corporation, 4 Irving Place, New York, New York; in the above-entitled matter by sending on that date to the foregoing named corporations at the addresses indicated, by postpaid registered mail, return receipt requested, a complaint and notice of hearing in the above-entitled matter, dated May 12, 1937; that she did receive therefor from the United States Post Office (Station City Hall Annex), New York, N. Y., Receipts for Registered Articles, dated May 12, 1937, and numbered 312266, 312267, 312268, 312269, 312270, and 312271, respectively, said receipts being attached hereto, marked Exhibit A, and made a part hereof.

**SADIE JACOBS.**

Subscribed and sworn to before me }  
this 14th day of May, 1937.

**ALBERT L. FAGER,**

**Notary Public, New York County No. 8; New  
(Seal) York Co. Register's No. 8F-195. My Com-  
mission expires March 30, 1938.**

[Copies of United States Post Office "Receipt for Registered Article" omitted; no "Return Receipts" for registered mail delivery were included in the Transcript of Record filed.]

A Western Union Telegraph Company "Messenger Errand Service Ticket" included in the filed Transcript is as follows:

U S GOVT NATIONAL LABOR RELATIONS BOARD  
 CHARGE TO THE NATIONAL MESS TELEGRAPH COMPANY  
 EMERGENCY SERVICE TICKET

ISSUE NO.  
 3509

DATE MAY 12 1941  
 TIME OUT 12 30  
 TIME RETURNED 10 01

| TOTAL CHARGE CHARGES<br>(INCLUDING SCAFFOLD) | CHARGES TO<br>COLLECTOR  |                          | CHARGES<br>OBTAINED | CLERK'S<br>INITIALS | BANK |       |
|--|--------------------------|--------------------------|---------------------|---------------------|------|-------|
|  | CUSTOMER                 | RECEIVED                 |                     |                     | NO.  | ADD'L |
| 95¢ 98                                       | <input type="checkbox"/> | <input type="checkbox"/> | 15                  | WK                  | 29   | 2     |

ABOVE  
 CALLED BY  
 UNITED ELEC RADIO WORKERS 1133  
 WHERE SENT CHARGE 14 TL BROTHERHOOD ELEC WORKERS 103E25  
 CONSOLIDATED EDISON CO 3 IRVING PLACE  
 STREET AND NO.  
 3 PACKAGES  
 ARTICLE SENT C.O.D.

CONSOLIDATED EDISON COMPANY OF NEW YORK  
 4 IRVING PLACE, N. Y.

Charges are Based Solely on Time Messenger is Used, During which Time  
 the Messenger is Subject to the Direction and Control of Customer.



OFFICE OF THE  
DIRECTOR OF INVESTIGATION

Under the direction of  
Special Agent in Charge  
White, District  
Radio Workers of America  
J. Levine

**Notice of Special Appearance and Motion by Respondents (Petitioners Herein), with Affidavit in Support of Motion, to Dismiss Complaint for Lack of Jurisdiction**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS  
BOARD  
SECOND REGION**

**IN THE MATTER**

**of**

**CONSOLIDATED EDISON COMPANY OF NEW  
YORK, INC., and its affiliated Companies,  
BROOKLYN EDISON COMPANY, INC.,  
NEW YORK & QUEENS ELECTRIC LIGHT  
& POWER COMPANY,  
WESTCHESTER LIGHTING COMPANY,  
THE YONKERS ELECTRIC LIGHT AND  
POWER COMPANY,  
NEW YORK STEAM CORPORATION,  
CONSOLIDATED TELEGRAPH & ELEQ-  
TRICAL SUBWAY COMPANY,**

**Respondents,**

**and**

**UNITED ELECTRICAL AND RADIO WORKERS  
OF AMERICA, Affiliated with the COMMIT-  
TEE FOR INDUSTRIAL ORGANIZATION.**

**Case No.  
II-C 224**

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PLEASE TAKE NOTICE, that the above-named respondents, appearing specially and only for the purposes of the motions hereinafter set forth, hereby jointly and severally move that the Board dismiss the complaint and charge herein and terminate the proceeding, upon the grounds that the National Labor Relations Board has no jurisdiction, power or authority over the respondents or

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***Notice of Special Appearance and Motion by Respondents (Petitioners Herein), with Affidavit in Support of Motion, to Dismiss Complaint for Lack of Jurisdiction***

over the subject-matter of the complaint and charge and has no jurisdiction, power or authority to hear and determine the same, and that the labor practices of the respondents, alleged in the complaint, are not shown to affect "commerce" as defined in the National Labor Relations Act; and upon the further ground that such matters and things as are complained of are under the jurisdiction of the State of New York, and not of the Federal Government, and that the Legislature of the State of New York has, upon the recommendation of The Governor, passed an Act entitled "An Act to amend the labor law, in relation to establishing a labor relations board to promote equality of bargaining power between employer and employee and to diminish the causes of industrial disputes by encouraging collective bargaining, and making an appropriation to the department of labor", by which Act any such complaint and charge as to any of the respondents would be exclusively under the jurisdiction of the New York State Labor Relations Board created thereunder.

This motion is made by the respondents upon the complaint and charge, without admitting the truth or sufficiency of any of the allegations thereof, and upon the annexed affidavit, sworn to May 17, 1937, by Oscar H. Fogg, Vice-Chairman of the Board of Trustees of the respondent Consolidated Edison Company of New York, Inc.

The respondents respectfully ask that the Board grant a hearing upon this motion, and that the motion be ruled upon and determined, before a hearing is held upon the complaint served on the respondents on May 12, 1937.



*Notice of Special Appearance and Motion by Respondents (Petitioners Herein), with Affidavit in Support of Motion, to Dismiss Complaint for Lack of Jurisdiction*

The respondents, appearing only specially as above stated, move further that the Board order that the complaint and charge herein, and all proceedings instituted in respect thereto, including the motion above made, be transferred to and continued before the Board, in Washington, D. C., for the reasons that this case involves a highly important issue as to the applicability of the National Labor Relations Act (48 Stat. 449) to the operations of the respondents in local and intra-state production, transmission, distribution, sale or delivery of electricity, gas or steam, or in the furnishing locally of intra-state facilities for the transmission and distribution of electricity, and as to the proper scope of the Federal power to regulate such operations, and that the importance of the issue, not only to the interested parties but to the public, warrants and requires that the hearing and decision of this motion and any further proceedings herein be directly by the Board.

The respondents, appearing only specially as above stated, move further that the Board extend their time to answer the complaint herein to five days after the final determination of this motion, and that any hearing upon such complaint set down to be held by and before the Trial Examiner on June 1, 1937, or by and before the Board, shall be adjourned and shall not be held until at least ten days after the final determination of this motion.

Dated, New York, May 17, 1937.

CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC.,

By

O. H. Fogg,

Vice Chairman

Wagner, William J. Kennedy, John J. Emler and Stephen L. Solosy, and each of them, as set forth above, the respondents have interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by such discharges have engaged in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act."

(3) Paragraph 21 will be amended to read as follows: "By the discharge of said Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John J. Emler and Stephen L. Solosy, and each of them, as set forth above, the respondents did discriminate and are discriminating in regard to the hire and tenure of employment of said Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John J. Emler and Stephen L. Solosy, and each of them, and did discourage and are discouraging membership in or assistance to labor organizations, and did thereby engage in and are thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the National Labor Relations Act."

(Signed) DAVID A. MOSCOVITZ  
DAVID A. MOSCOVITZ  
Regional Attorney  
Second Region

On June 10, 1937, the above-stated amendments of the complaint were allowed by the Trial Examiner (S. M. 39).

- 64 *Notice of Special Appearance and Motion by Respondents (Petitioners Herein), with Affidavit in Support of Motion, to Dismiss Complaint for Lack of Jurisdiction*

**BROOKLYN EDISON COMPANY, INC.,**

By

**A. AUGUSTUS LOW**  
*Exec. Vice Pres.*

**NEW YORK AND QUEENS ELECTRIC  
LIGHT AND POWER COMPANY**

65

By

**L. A. COLEMAN**  
*Vice Pres't*

**WESTCHESTER LIGHTING COMPANY**

By

**E. P. PREZZANO**  
*President*

**THE YONKERS ELECTRIC LIGHT AND  
POWER COMPANY**

By

**E. P. PREZZANO**  
*President*

66

**NEW YORK STEAM CORPORATION**

By

**DAVID C. JOHNSON**  
*President*

**CONSOLIDATED TELEGRAPH AND  
ELECTRICAL SUBWAY COMPANY**

By

**E. S. CALLAHAN**  
*President*



13  
**Notice of Special Appearance and Motion by Respondents (Petitioners Herein), with Affidavit in Support of Motion, to Dismiss Complaint for Lack of Jurisdiction**

67

To:

**MRS. ELINORE MOREHOUSE HERRICK,**  
*Regional Director for the Second Region,*  
45 Broadway,  
New York, N. Y.

**UNITED ELECTRICAL AND RADIO WORKERS  
OF AMERICA, LOCAL 1212 affiliated with the  
COMMITTEE FOR INDUSTRIAL ORGANIZATION** 68  
3 Albee Square,  
Brooklyn, N. Y.

**WHITMAN, RANSOM, COULSON & GOETZ,**  
*Attorneys for Respondents,*  
No. 40 Wall Street,  
New York City.

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**Affidavit in Support of Motion by Respondent Companies  
(Petitioners Hereto) to Dismiss Complaint**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS  
BOARD  
SECOND REGION**

**IN THE MATTER**

**of**

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**CONSOLIDATED EDISON COMPANY OF NEW  
YORK, INC., and its affiliated Companies,  
BROOKLYN EDISON COMPANY, INC.,  
NEW YORK & QUEENS ELECTRIC LIGHT  
& POWER COMPANY,  
WESTCHESTER LIGHTING COMPANY,  
THE YONKERS ELECTRIC LIGHT AND  
POWER COMPANY,  
NEW YORK STRAM CORPORATION,  
CONSOLIDATED TELEGRAPH & ELECTRIC  
SUNWAY COMPANY,**

**Respondents,**

**Case No.  
II-C 224**

**and**

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**UNITED ELECTRICAL AND RADIO WORKERS  
OF AMERICA, Affiliated with the COMMIT-  
TEE FOR INDUSTRIAL ORGANIZATION.**

**STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.:**

**OSCAR H. FOGG, being duly sworn, deposes and says:**

**1. I am the Vice-Chairman of the Board of Trustees  
of the respondent Consolidated Edison Company of New  
York, Inc., and am the Vice-Chairman or a member of the**

*Affidavit in Support of Motion by Respondent Companies  
(petitioners herein) to Dismiss Complaint*

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Board of Directors of each of the affiliated Companies also named as respondents in the above-entitled proceeding, and am familiar with the matters and things therein involved. This affidavit is submitted in behalf of each of the named respondents, in support of their motion to dismiss the complaint herein and for the further relief asked therein.

2. The respondents have appeared specially in this proceeding, for the sole purpose of moving jointly and severally to dismiss the complaint and charge herein and terminate the proceeding, upon the grounds, stated in their notice of motion, that the National Labor Relations Board has no jurisdiction, power or authority over the respondents or over the subject-matter of the complaint and charge and has no jurisdiction, power or authority to hear and determine the same, and that the labor practices of the respondents, alleged in the complaint, are not shown to affect "commerce" as defined in the National Labor Relations Act; and upon the further ground that such matters and things as are complained of are under the jurisdiction of the State of New York, and not of the Federal Government, and that the Legislature of the State of New York has, upon the recommendation of The Governor, passed an Act entitled "An Act to amend the labor law, in relation to establishing a labor relations board to promote equality of bargaining power between employer and employee and to diminish the causes of industrial disputes by encouraging collective bargaining, and making an appropriation to the department of labor", by which Act any such complaint and charge as to any of the respondents would be exclusively under the jurisdiction of the New York State Labor Relations Board created thereunder.

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**76** *Affidavit in Support of Motion by Respondent Companies  
(petitioners herein) to Dismiss Complaint*

**RESPONDENTS ARE ENGAGED ONLY IN LOCAL OPERATIONS**

**77** 3. Each of the respondents Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, and New York Steam Corporation, is a local operating public utility company, organized and existing under the laws of the State of New York, engaged in supplying utility service to the public within the City of New York. The respondents Westchester Lighting Company and The Yonkers Electric Light and Power Company are local operating public utility companies, organized and existing under the laws of the State of New York engaged in supplying utility service to the public within Westchester County. The respondent Consolidated Telegraph and Electrical Subway Company is a corporation organized and existing under the laws of the State, engaged in carrying on business wholly within the City of New York.

**78** 4. Each of the respondents (except the Consolidated Telegraph and Electrical Subway Company) is subject to the regulatory jurisdiction and powers of the Public Service Commission of the State of New York in the respects provided by law, and is generally subject to the regulatory jurisdiction and supervision of the State of New York.

**RESPONDENTS' OPERATIONS ARE WHOLLY INTRA-STATE**

5. The respondent public utility Companies transmit, distribute, sell or deliver electricity, gas or steam to customers within the State of New York, and do not transmit, distribute, sell or deliver electricity, gas or steam in interstate commerce or across any State line.

*Affidavit in Support of Motion by Respondent Companies  
(petitioners herein) to Dismiss Complaint*

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The production, transmission, distribution, sale and delivery of such electricity, gas or steam, by the respondents, take place wholly within the State of New York. All of the manufacturing plants of the respondents and all of their facilities for transmission, distribution and delivery of electricity, gas or steam, as well as their offices and other operating properties, are situated within the State of New York, and are operated and used exclusively within the State of New York. None of the respondents transmits, distributes, sells or delivers electricity, gas or steam that was generated outside the State of New York or that has crossed any State line. The system and lines of the respondents are not interconnected with the lines of any corporation supplying electricity, gas or steam which has crossed any State line.

80

6. Reference is made in the complaint to a physical interconnection between the electric system and lines of the respondents and the electric system and lines of the New York Power and Light Corporation, one of the Companies of the Niagara Hudson Power Corporation. None of the respondents, however, thereby receives electric energy from, or sells electric energy to, any corporation which receives electric energy from a generating or transmission system in the Dominion of Canada or anywhere outside the State of New York and which transmits or distributes electric energy of such foreign or outside origin. I am informed and believe that the New York Power and Light Corporation does not receive, transmit or sell any electricity generated outside the State of New York.

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7. Reference is made in the complaint to electricity supplied by the respondents to the New York Central

***Affidavit in Support of Motion by Respondent Companies  
(petitioners herein) to Dismiss Complaint***

Railroad Company. Such energy is transmitted and delivered by one of the respondents to the New York Central Railroad Company wholly within the State of New York, and is used by the Railroad Company wholly within the State of New York. Electricity which is supplied by one of the respondents to the New York, New Haven and Hartford Railroad Company and other interstate carriers is likewise transmitted and delivered by such respondent wholly within the State of New York.

83 8. Reference is made in the complaint to the respondents' production and disposal of various by-products, such as coke, ammonium sulphate, and coal tar. Such by-products are manufactured wholly within the State of New York and are sold and delivered by the respondents within the State of New York, and none of the respondents transports them or causes them to be transported in interstate commerce.

84 9. Reference is made in the complaint to the fact that the respondents supply and deliver locally electricity, gas and steam to various concerns which are or may be themselves engaged in interstate commerce or communication. But the supply and delivery of such service to such concerns take place wholly within the State of New York, and the respondents do not participate in any interstate activities of such concerns. Although some of the materials and commodities used by some of the respondents locally are purchased in other States and are shipped to such respondents in interstate commerce, they are not used by such respondents in interstate commerce.

10. As used in the National Labor Relations Act (48 Stat. 449), under the definition in Section 2(6), the term "commerce" means



***Affidavit in Support of Motion by Respondent Companies  
(petitioners herein) to Dismiss Complaint***

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**"trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country."**

86

I am advised by counsel, and verily believe, that the labor practices of the respondents, alleged in the complaint and otherwise, do not affect, burden or interfere with "commerce" as defined in the National Labor Relations Act.

**EMPLOYMENTS HAVE BEEN ADVISORIED TO BE ENGAGED  
EXCLUSIVELY IN INTRA-STATE BUSINESS AND TO DO  
NOTHING WHICH BURDENS OR AFFECTS INTERSTATE  
COMMERCE**

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11. In an action brought by the Consolidated Edison Company of New York, Inc., and other affiliated Companies, in the United States District Court for the Southern District of New York, to obtain an adjudication as to the applicability or validity, as to them, and to enjoin the enforcement against them of the provisions and requirements of the Public Utility Holding Company Act of 1935, the defendant representatives of the Government of the United States did not deny the allegations of the bill of complaint or contest the right of the plaintiffs to a final decree in their favor. In entering a decree *pro confesso* as to the inapplicability of the

**22 Affidavit in Support of Motion by Respondent Companies  
(petitioners herein) to Dismiss Complaint**

Federal statute to venue of the respondent's here, the United States District Court, per Caffey, D.J., referred on July 28, 1936, to the "companion" by the Government.

"that the corporate plaintiffs are engaged exclusively in intra-State business and do nothing which directly burdens or affects interstate or foreign commerce."

- 23** Final decree was entered accordingly; the Government of the United States took no appeal from such decree; and the time to appeal therefrom has expired.

**RESPONDENTS ARE SUBJECT ONLY TO THE JURISDICTION  
AND LAWS OF THE STATE OF NEW YORK IN LABOR  
MATTERS**

**24** 12. The respondents do not make their motion to dismiss the complaint for want of jurisdiction in the National Labor Relations Board, because of any desire or purpose to avoid or escape all governmental supervision of their labor practices. The Legislature of the State of New York, upon the recommendation of The Governor, has passed a bill identified as Assembly Introductory No. 3422, Print No. 3348, entitled "An Act to amend the labor law, in relation to establishing a labor relations board to promote equality of bargaining power between employer and employee and to diminish the causes of industrial disputes by encouraging collective bargaining, and making an appropriation to the department of labor." This Act is to be known as the "New York State Labor Relations Act". This Act, when approved by The Governor, will take effect July 1, 1937, and will subject the respondents as local, intra-State

***Affidavit in Support of Motion by Respondent Companies  
(petitioners herein) to Dismiss Complaint***

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concerns to supervision and regulation by the New York State Labor Relations Board, authorized for the purpose of exercising, as to such intra-state concerns, supervisory powers and jurisdiction similar to that possessed by the National Labor Relations Board as to interstate concerns. The granting of the present motion to dismiss the complaint would avoid a duality, if not conflict, of jurisdiction, and keep within State jurisdiction and supervision the matters which are essentially local in their nature and scope.

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13. In behalf of the respondents, I submit most respectfully that the orderly determination of labor disputes will be promoted, in the public interest, if all such matters affecting the respondents are left to the governmental powers and authority of the State of New York and to the jurisdiction and powers of the Labor Relations Board of the State of New York, authorized to be created by the New York State Labor Relations Act, inasmuch as the respondents' operations are wholly within that State and are broadly subject in other respects to the regulation and supervision of the laws of the State of New York.

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**THE COMPLAINT AND CHARGE ARE WITHOUT MERIT**

14. The complaint contains various allegations derived from a charge filed in behalf of a purported labor organization affiliated with the Committee for Industrial Organization. Should the respondents be called upon to answer the complaint by and before a board which has jurisdiction of such matters, the respondents will show that the allegations of the charge are without foundation in fact and wholly without merit. The termination of employment of certain employees mentioned in the com-



**24 Affidavit in Support of Motion by Respondent Companies  
(petitioners herein) to Dismiss Complaint**

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15. I am advised and believe that this proceeding and the respondents' motions present a highly important issue as to the applicability of the National Labor Relations Act (48 Stat. 449) to the operations of the respondents in local and intra-state production, transmission, distribution, sale or delivery of electricity, gas or steam, or in the furnishing locally of intra-state facilities for the transmission and distribution of electricity, and as to the proper scope of the Federal power to regulate such operations, and that the importance of the issue, not only to the interested parties but to the public, warrants and makes advisable the hearing and decision of this motion and of any further proceedings herein, directly by the Board. The respondents accordingly move the Board that the complaint and charge herein, the respondents' motion to dismiss for want of jurisdiction, and any further proceedings in respect thereto, be transferred to and continued before the Board, in Washington, D. C.

***Affidavit in Support of Motion by Respondent Companies  
(petitioners herein) to Dismiss Complaint*** 97

WHEREFORE, in behalf of each of the respondents appearing specially for the purposes of such a motion, I respectfully ask that the complaint and proceeding herein be dismissed, as to each of the respondents, upon each of the grounds stated in the notice of motion, and also that they be granted the further relief asked for in the annexed notice of motion.

O. H. FOGG.

Subscribed and sworn to before me }  
this 17th day of May, 1937. }

98

MARION SEITZ.

Marion Seitz

Notary Public, New York County

Clerk's No. 657, Register's No. 9-S-632.

Commission Expires March 30, 1939

(SEAL)

99

100

**Amended Notice of Hearing by Board, Dated May 5, 1937**

101

**PLEASE TAKE NOTICE** that on the third day of June, 1937, at ten o'clock in the forenoon, at The Auditorium of the New York County Lawyers Association, at 14 Vesey Street, New York, New York, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner, designated by it in accordance with its Rules and Regulations, Series 1, as amended, Article IV, and Article II, Section 23, on the allegations set forth in the Complaint in the matter of Consolidated Edison Company of New York, Inc., and its affiliated Companies, Brooklyn Edison Company, Inc.; New York & Queens Electric Light & Power Company; Westchester Lighting Company; The Yonkers Electric Light and Power Company; New York Steam Corporation; Consolidated Telegraph & Electrical Subway Company, and United Electrical and Radio Workers of America, affiliated with the Committee for Industrial Organization, case II-C-224, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

102

The foregoing paragraph is hereby substituted for the first paragraph in the Notice of Hearing issued by the Regional Director for the Second Region, under date of May 12, 1937.

**IN WITNESS WHEREOF** the National Labor Relations Board has caused this substitution and amendment of Notice of Hearing to be signed by the Regional Director for the Second Region on the 25th day of May, 1937.

**ELINORE MOREHOUSE HERRICK,**  
*Regional Director for the Second Region,*  
*National Labor Relations Board,*  
 45 Broadway, New York City.



## Affidavit of Service of Amended Notice of Hearing

103

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

IN THE MATTER

of

CONSOLIDATED EDISON COMPANY OF NEW  
YORK, INC., and its affiliated companies

II-C-224

and

104

UNITED ELECTRICAL AND RADIO WORKERS  
OF AMERICA.

## AFFIDAVIT OF SERVICE

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.:

ALAN JOYCE MACADAMS, Clerk-Stenographer, Second Region, being duly sworn, deposes and says that on the 25th day of May, 1937, as agent for the National Labor Relations Board, he served upon:

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Westchester Lighting Co., 9 South First Avenue,  
Yonkers, N.Y.

International Brotherhood of Electrical Workers, 130  
East 25 Street, N.Y.C.

New York Steam Corporation, 4 Irving Place, N.Y.C.  
Yonkers Electric Light & Power Company, 45 South  
Broadway, Yonkers, N.Y.

Consolidated Telegraph & Electric Subway, 54 Lafayette  
Street, N.Y.C.

N. Y. & Queens Elec. Light & Power Co., 28-19 Bridge  
Plaza North, L. I. C., N.Y.

Brooklyn Edison Company, Inc., 380 Pearl Street,  
Brooklyn, N.Y.

**Affidavit of Service of Amended Notice of Hearing**

Robert H. Coulson, Esq., 40 Wall Street, N.Y.C.  
Consolidated Edison Co. of N. Y., Inc., 4 Irving Place,  
N.Y.C.

107 in the above-entitled matter, by sending on that date to the foregoing named parties at the addresses indicated, by postpaid registered mail, return receipt requested, an **AMENDED NOTICE OF HEARING** in the above-entitled matter, dated May 25, 1937; that he did receive therefor from the United States Post Office (City Hall Annex), New York, New York, Receipts for Registered Articles, dated May 25, 1937, and numbered 303160, 303161, 303162, 303163, 303164, 303165, 303166, 303167 and 303168, respectively; said receipts being attached hereto and marked Exhibit A and made a part hereof.

Alan Joyce MacAdams also swears that he did post in the regular mail, by placing in the U. S. Mail Chute at 45 Broadway, New York, N. Y., a like Amended Notice of Hearing, addressed to United Electrical and Radio Workers of America, at 1133 Broadway, New York City.

**ALAN J. MACADAMS:**

108 Subscribed and sworn to before me }  
this 25th day of May, 1937. }

**SADIE JACOBS**

**SADIE JACOBS, Notary Public**

**Bronx Co. Clk. No. 34, Reg. No. 40-J-38\**

**N. Y. Co. Clk. No. 210**

**N. Y. Co. Reg. No. 8-J-138**

**Commission Expires March 30, 1938**

**[SEAL]**

[Copies of United States Post Office "Receipt for Registered Article" omitted; no "Return Receipts" for registered mail delivery are included in the Transcript of Record filed.]

37  
Order of the Board Dated May 26, 1937, designating Mr.  
Robert M. Gates, Trial Examiner of the Board, to Conduct  
the Hearing

109

UNITED STATES OF AMERICA  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD

At a regular meeting of the National Labor  
Relations Board, held at its office in the  
City of Washington, D. C., on the 26th day  
of May, 1937.

Present:

J. WARREN MADDEX, *Chairman*  
DONALD WAKEFIELD SMITH  
EDWIN S. SMITH

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IN THE MATTER  
of  
CONSOLIDATED EDISON COMPANY, INC.,  
and its affiliated companies,  
and  
UNITED ELECTRICAL & RADIO WORKERS  
OF AMERICA, LOCAL NO. 1212, C.I.O.

Case No.  
II-C-224

111

ORDER DESIGNATING TRIAL EXAMINER

A charge having been filed in this matter, and it  
having appeared to the Regional Director of the Second  
Region that a proceeding in respect thereto should be  
instituted, and the Board having considered the matter  
and being advised in the premises,

IT IS HEREBY ORDERED that Robert M. Gates act as Trial  
Examiner in the above case and perform all the duties  
and exercise all the powers granted to trial examiners  
under the Rules and Regulations—Series 1, as amended,  
of the National Labor Relations Board.

By direction of the Board:

BENEDICT WOLF,  
*Secretary.*



112

Order of the Board dated June 2, 1937, Denying the Request of the Respondent Company for a Prior and Separate Hearing on Their Motion to Sustain the Complaint for Want of Jurisdiction

**UNITED STATES OF AMERICA**  
**BEFORE THE NATIONAL LABOR**  
**RELATIONS BOARD**

113

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 2nd day of June, 1937.

Present:

**DONALD WAKENFIELD SMITH**  
**EDWIN S. SMITH**

**IN THE MATTER**

**of a**

**114 CONSOLIDATED EDISON COMPANY, INC.,**  
**and its affiliated companies,**

**and**

**UNITED ELECTRICAL & RADIO WORKERS**  
**OF AMERICA, Local No. 1212, C.I.O.**

**Case No.**  
**II-C-224**

A complaint having been duly issued in the above matter alleging that respondent has engaged in certain unfair labor practices within the meaning of Section 8 of the National Labor Relations Act, and thereafter respondent having filed a motion to dismiss the complaint

**Order of the Board Dated June 2, 1937, Denying the  
Request of the Respondent Companies for a Prior and  
Separate Hearing on Their Motion to Dismiss the  
Complaint for Want of Jurisdiction**

115

and having requested a hearing on said motion before  
hearings held upon the complaint, and the Board having  
duly considered the matter,

It is hereby ordered that the respondent's request  
for a hearing on the motion to dismiss the complaint be-  
fore any hearing is held on the complaint be and hereby  
is denied.

By direction of the Board:

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**BENEDICT WOLF,**  
*Secretary.*

(Seal of National Labor  
Relations Board)

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Notice of Motion by the Board to Amend the Complaint  
(served on the respondent Companies June 9, 1937)

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

119

IN THE MATTER

of

CONSOLIDATED EDISON COMPANY OF NEW  
YORK, INC., and its affiliated Companies,  
BROOKLYN EDISON COMPANY, INC.,  
NEW YORK & QUEENS ELECTRIC LIGHT  
& POWER Co.,  
WESTCHESTER LIGHTING COMPANY,  
THE YONKERS ELECTRIC LIGHT &  
POWER COMPANY,  
NEW YORK STEAM CORPORATION,  
CONSOLIDATED TELEGRAPH & ELECTRICAL  
SUBWAY Co.,

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*Respondents,*

and

UNITED ELECTRICAL AND RADIO WORKERS  
OF AMERICA, Affiliated with the Com-  
mittee for Industrial Organization.

Case  
II-C-224

PLEASE TAKE NOTICE:

That the undersigned will move to amend the complaint in the above-entitled proceeding at the hearing to be conducted by the National Labor Relations Board, by a Trial Examiner, on the 10th day of June, 1937, in the following respects:



*Notice of Motion by the Board to Amend Its Complaint* 121  
*(served on the respondent Companies June 9, 1957)*

1) Paragraph 19 will be amended to read as follows:  
"The respondents, jointly and severally, by their officers and agents on or about January 17, 1936 discharged and refused to reinstate Stephen L. Solosy; and on or about June 19, 1936 discharged and refused to reinstate William J. Kennedy and John J. Emler, employees of the respondents, and each of them, for the reason that they engaged with other employees of the respondents in concerted activities for their mutual aid and protection."

2) Paragraph 20 will be amended to read as follows: 122  
"By their discharge of said Martin A. Gersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John J. Emler and Stephen L. Solosy, and each of them, as set forth above, the respondents have interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by such discharges have engaged in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act.

3) Paragraph 21 will be amended to read as follows: 123  
"By the discharge of said Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John J. Emler and Stephen L. Solosy, and each of them, as set forth above, the respondents did discriminate and are discriminating in regard to the hire and tenure of employment of said Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John J. Emler and Stephen L. Solosy, and each of them, and did discourage and are discouraging membership in or assistance to labor organizations, and did thereby engage in and are thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the National Labor Relations Act.

DAVID A. MOSCOWITZ

David A. Moscovitz

Regional Attorney

Second Region

Answer of the Respondent Companies (Telephone Books) to  
the Complaint of the Board as amended on June 14, 1937

United States of America

Knows all

NATIONAL LABOR RELATIONS BOARD

Eastern District

IN THE MATTER

of

125 CONNORSON POWER COMPANY of New  
York, Inc., and its affiliated Companies  
BROOKLYN POWER COMPANY, Inc.,  
New York and Queens RAILROAD  
LIGHT AND POWER COMPANY,  
WASHINGTON LIGHTING COMPANY,  
THE VENTURE RAILROAD LIGHT AND  
POWER COMPANY,  
New York Street Corporation,  
COMMERCIAL TELEPHONE AND ELECTRIC  
CABLE COMPANY,

Respondents,

and

126 UNITED RAILROAD AND RAIL WORKERS  
of America, affiliated with the Commu-  
nist Party International Organization.

Case No.  
IL-C 234

Answer of Respondents to Complaint as amended  
June 14, 1937

The respondents above named, having appeared here-  
in specially and only for the purposes stated in their  
Notice of Motion dated May 17, 1937, hereby jointly and

*Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937*

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severally Answer the complaint herein as amended to and including June 14, 1937, reserving, however, in all respects their objections to the jurisdiction of the National Labor Relations Board as stated in their Notice of Motion; and respectfully show and allege upon information and belief:

1. The respondents admit the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of the complaint, except that the respondents allege that the Consolidated Edison Company of New York, Inc., has not been and is not engaged in the manufacture, distribution and sale of steam to the general public, and that the facts as to the percentages of the outstanding capital stock of various of the respondents owned by the respondent, Consolidated Edison Company of New York, Inc., are more accurately shown in the Stipulation of the parties, dated June 2, 1937, which has been made a part of the record in this proceeding. The respondents further allege that each of the respondents (except the Consolidated Telegraph and Electrical Subway Company) is a corporation organized and existing under general or special laws of the State of New York for the purpose, and is subject to the public duty, of supplying electric, gas or steam service, to consumers situated within their respective local franchise territories within the City of New York or the County of Westchester; that, in addition to the general corporate powers of the respondents, they possess, and conduct their operations by virtue of, various local franchises to lay, maintain and operate mains, pipes, wires or other conductors for conducting gas, electricity or steam, in, on, over, under and through the streets, avenues and other public places within the City of New York and in various cities, villages and towns

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*Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1887*

131 in Westchester County, subject to the terms of such franchises and to such reasonable regulations as the local municipal authorities may prescribe; that these franchises were granted in some instances by special legislative Acts of the State of New York and in other instances by consents of the local municipal authorities in the State of New York; that (excepting the respondent Consolidated Telegraph and Electrical Subway Company) each of the respondents is "a public utility company" as defined in Section 2, subdivision 22, of the Public Service Law of the State of New York, and is subject to the jurisdiction and regulatory powers of the Public Service Commission of the State of New York as to its operations, properties, rates, revenues, expenditures, accounts and other respects provided by law; that the public obligation of such respondents is to render adequate and continuous service, at rates limited by such regulation, to local consumers situated in their respective territories within the City of New York or Westchester County; that the respondent Consolidated Telegraph and Electrical Subway Company is a corporation organized and existing under the laws of the State of New York; that, although affiliated with the Consolidated Edison Company of New York, Inc., through the latter's ownership of its stock, such respondent is not a public utility, within the meaning of the Public Service Law of the State of New York, and does not produce or supply electricity, gas or steam, or sell any product to anybody; and that under a contract dated April 7, 1887, modifying a prior contract dated July 22, 1886, with the Commissioners of Electrical Subways for the City of New York, ratified and confirmed by and subject to express legislative enactment (Chapter 716, Laws 1887), as modified

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*Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937*

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by a contract dated May 15, 1891 authorized by Chapter 231, Laws 1891, the Consolidated Telegraph and Electrical Subway Company provides, constructs, equips, maintains and operates subways, ducts, and conduits for the reception of electrical conductors (other than telegraph and telephone conductors) in the Borough of Manhattan and The Bronx, City of New York, within which its operations are wholly conducted.

II. The respondents deny the allegations of Paragraph 9 of the complaint, as made, and allege that the respondents Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, and the New York Steam Corporation, are commonly referred to as the Consolidated Edison Company group of Companies or the Consolidated Edison Company System; that the respondents (other than the Consolidated Telegraph and Electrical Subway Company) constitute, and are operated as, a unitary and integrated system, in the respects stated and shown in the Stipulation of the parties dated June 2, 1937, for the supplying of electric, gas and steam service to consumers within parts of the City of New York and the County of Westchester, State of New York; that each of the respondent Companies has executive and operating officers and employees who are not officers of the respondent Consolidated Edison Company of New York, Inc., but who take part, with the Trustees and officers of the latter, in the discussion and determination of the major and general policies of the group of Companies; and that the major labor policies, among others, of the group of Companies are thus discussed and determined,

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**135** *Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937*

but are locally administered and applied by and through the Board of Directors and executive officers of each Company, in a manner not inconsistent with the general policies as determined by and for the group of Companies.

- 137** **III.** The respondents deny the allegations of Paragraph 10 of the complaint, except that the respondents allege that the respondents Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., and New York Steam Corporation, purchase coal, oil, and other materials, for use in the production of electricity, gas or steam; that such purchases of coal, oil, and other materials are made only from non-affiliated producers or dealers; that none of the respondents owns or operates, or is interested in, directly or indirectly, any mine, well, refinery, processing establishment or factory, from which it purchases or receives materials used in the production of electricity, gas or steam (excepting by-products produced in the respondents' own gas plants and used in large part in their own plants as fuel, as hereinafter set forth); that the coal purchased and delivered to the Consolidated Edison Company of New York, Inc., and its affiliated Companies was mined outside of the City and State of New York, and was brought to the various plants in New York City by rail and barge or by rail and steamship; that none of the respondents owns or operates any ships, barges, tugs, or freight-cars, for the transportation or delivery of coal, or any other materials, from the point of receiving delivery to the stations or storage yards of the respondents; that where the point of receiving delivery of coal is other than at a station or storage yard of one of the respondents, the transportation and handling of the coal
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*Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937*

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thence to one of the stations or yards of the respondents are done by persons who are employees of the carrier and are not employees of the respondents; that the Consolidated Edison Company of New York, Inc., purchases gas-oil, under contracts, for its gas operations; that such oil is produced at wells and refineries outside the City and State of New York, and is delivered by the seller to the purchaser, within the City of New York, in barges alongside the gas plants; that the respondent Consolidated Edison Company of New York, Inc., and certain of its affiliated Companies buy copper mined outside of the State of New York, substantial quantities of which are purchased from concerns outside of New York, which is delivered to the purchaser within the State of New York; that the respondent Consolidated Edison Company of New York, Inc., and certain of its affiliated Companies, purchase other materials and equipment and supplies, including distribution and power transformers, switches, steel pipe, concrete, cement, electric meters, gas meters, incandescent lamps, etc., from dealers of whom most are located within the City or State of New York but some of whom are located outside of the State of New York; and that such purchases are made under contracts or orders, which in most instances provide for delivery to one of the respondents within the State of New York, but in some instances delivery is made by the seller outside of the State of New York, and the transportation to one of the respondents is performed by others than employees of any of the respondents.

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IV. The respondents deny the allegations of Paragraph 11 of the complaint. Respondents allege that the respondents have no interconnection with any other

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*Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937.*

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public utility company or system for the supplying or exchange of gas or steam, and no interconnection with any public utility or system located outside of the State of New York for the supplying or exchange of electric energy, and no interconnection for the supplying or exchange of electric energy with any company or system supplying electricity, gas or steam to the public, within or outside the State of New York, except the interconnection with the New York Power and Light Corporation, which is an affiliated company of the Niagara Hudson Power Corporation; that the New York Power and Light Corporation operates steam, electric and hydro-electric generating plants, and supplies electric service and gas service to consumers, all situated within the State of New York, in eastern New York State, including territory north of Westchester County; that the lines of the New York Power and Light Corporation are publicly stated to be interconnected with those of other companies of the same system, which are situated and operated within the State of New York; that the interconnection with the New York Power and Light Corporation is from the Hell Gate Station, at 134th Street and the East River in the Borough of The Bronx, City of New York, to the County boundary between Westchester and Putnam Counties interconnecting with the New York Power and Light Corporation's feeders at that point; that the Consolidated Edison Company and The Yonkers Electric Light and Power Company, in their respective territories, own the transmission lines between the Hell Gate station and the boundary between the City of Yonkers and the Town of Greenburgh, in the County of Westchester, from which point the overhead transmission lines to the Putnam County line are owned

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*Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937*

by the Westchester Lighting Company; that none of the respondent Companies owns, or transmits electric energy over any part of, the transmission line north of the County boundary between Westchester and Putnam Counties; that the electric energy transmitted by the respondents to the lines of the New York Power and Light Corporation is supplied by the latter to its consumers within the State of New York and is not transmitted, by it or by any of its affiliated companies, across any State boundary; and that none of the respondents has any interconnection with any company operating outside of the State of New York.

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V. The respondents deny the allegations of Paragraph 12 of the complaint, except that they allege that incidentally to the manufacture of gas, certain by-products of the distillation of coal and gas-oil are recovered; that in quantity and value, the principal by-products are coke (including breeze), tar, light oils and sulphate of ammonia; that coke and tar by-products are in large part used by the Companies themselves as fuel in gas manufacture; that from time to time as these by-products are recovered in gas operations, they are sold by the respondent Consolidated Edison Company to manufacturers or jobbers in New York City, for commercial uses, and that delivery to the purchaser is in each instance made at the gas plant, within the City of New York.

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VI. As to the allegations of Paragraph 13 of the complaint, the respondents admit that the respondents Consolidated Edison Company of New York, Inc., Westchester Lighting Company, or The Yonkers Electric Light and Power Company, sell and deliver electric energy to the New York Central Railroad Company, the



148 *Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937*

New York, New Haven and Hartford Railroad Company, and the Hudson and Manhattan Railroad Company, and that some of the energy so sold and delivered by such respondents to such carriers is or may be used by some of such carriers in the transportation of persons and property upon trains which are a part of interstate operations. Except to the extent above admitted, the respondents deny the allegations of Paragraph 13 of the complaint, and further allege that the Consolidated Edison group of Companies supplies electric energy under contracts with the New York Central Railroad Company; that electricity is used by the Railroad Company in part for the lighting and operation of the Grand Central Terminal, in part for the lighting and operation of various hotels, office buildings, and residential premises, upon terminal lands and appurtenant to the terminal property, and in part for the electric operation of local passenger trains upon the Hudson River Division of the Railroad as far as Croton, New York, and of through passenger trains as far as Harmon, New York; that various of the through trains so operated on that Division are a part of interstate transportation of passengers; that such through trains are changed from electric to steam operation at Harmon; that local passenger trains are operated electrically as far as Croton, New York; that no steam-propelled passenger trains ordinarily enter New York City on the Hudson River Division of this railroad; that electricity supplied by the Consolidated Edison Company is used for the air-conditioning of Pullman cars, in the yards of the New York Central Railroad Company within the City of New York; that the Consolidated Edison Company also supplies electric energy under contracts with the New York,

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*Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937*

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New Haven and Hartford Railroad Company; that electric energy is used by the Railroad Company for the operation of its freight terminals and for its operation of passenger trains out of Grand Central Terminal, some of which trains are only for intrastate traffic, and others of which are for interstate traffic; that the Consolidated Edison Company also supplies energy under contract with the Hudson and Manhattan Railroad Company; that the electric energy is used by that Company for the lighting and operation of its Hudson Terminal Buildings at Nos. 30 and 50 Church Street, Borough of Manhattan, and for the operation of its local rapid transit railroad from 33rd Street and Sixth Avenue, in the Borough of Manhattan, southward underground along Sixth Avenue to Christopher Street, Borough of Manhattan, and thence by tunnel to Jersey City and Hoboken; also an interurban railroad from the Hudson Terminal Buildings, through the tube or tunnel under the North River, to Jersey City and Newark; that the electricity sold to each of the said Railroad Companies was and is delivered to it at designated locations wholly within the City of New York, and that none was transmitted by any of the respondents beyond the points of such delivery.

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VII. The respondents deny the allegation of Paragraph 14 of the complaint that they jointly and severally are the sole suppliers of electric current in the City of New York outside of the County of Richmond. The respondents admit that they sell and deliver electric energy to various persons and corporations having their offices and plants in New York City, some of which persons and corporations are or may be engaged in interstate as well as local shipment of products or operations.

154 *Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937*

Respondents further allege that all of the business offices, electric generating stations, substations, gas manufacturing plants, steam generating plants, and various other properties, of the respondents, are located and used by the respondents within the City of New York or the County of Westchester; that all transmission and distribution facilities and equipment and all other property owned by the respondents and used in their business are located and used by the respondents within the City of New York or the County of Westchester; that all meters in use by any of the respondents are located, and are read, on the premises of consumers, situated within the City of New York or the County of Westchester; that the preparation and sending of bills to consumers takes place within the City of New York or the County of Westchester; that all metering apparatus and equipment furnished by the respondents are located on premises of customers within the City of New York or the County of Westchester; that none of the respondents undertakes, or has any contract or agreement, to supply, deliver or transmit electric energy at any location outside of the State of New York, or to supply or deliver electric energy for resale by customers outside of the State of New York, and that none of the operations of the respondents directly affects interstate commerce.

VIII. The respondents deny the allegations of Paragraph 15 of the complaint, except that they admit that they sell and deliver electric energy for lighting, heat, power and miscellaneous local uses to various offices, branches, agencies and authorities of local, State and Federal governments, within the City of New York or the County of Westchester, and that some of the energy so supplied is used by the purchasers thereof for the



*Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937*

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operation of tunnels, docks, bridges and highways, which are or may be used in some part for interstate as well as local movement of persons and property. The respondents deny that the provisions of the National Labor Relations Act extend and apply to employers by reasons of the latter's sale of products or service to government as such.

IX. The respondents deny each of the allegations of Paragraph 16 of the complaint, on the ground that such allegations constitute no more than conclusions or argument on the part of the complainant. Respondents deny that any of them is engaged in interstate commerce or in "commerce" as defined in the National Labor Relations Act, and deny that the sale and delivery of gas, electricity or steam by any of the respondents enter into, burden or affect "commerce" as defined in the Act. The respondents allege that their operations are local and wholly intra-state in character and are wholly and exclusively subject to the jurisdiction and laws of the State of New York. The respondents further allege that the labor practices of any of the respondents are exclusively subject to the jurisdiction and laws of the State of New York and in particular to the New York State Labor Relations Act (Chapter 443 of the Laws of 1937).

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X. The respondents deny each and every allegation of Paragraph 17 of the complaint. The respondents admit that, at various times within the period covered by the complaint, but not subsequent to October, 1936, the respondents Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., and New York and Queens Electric Light and Power Company, did employ independent and outside operatives to do special work for the purpose of protecting the property

160 *Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937*

and operations of such respondents against actual and threatened violence, and of preventing threatened interference with the continuity of the respondents' service to the public. Such respondents allege that such services of outside operatives, in so far as they related to employees of such respondents at all, were not related to labor organizations as such or to activities in behalf of labor organizations as such, and that such services did not relate to persons because of their membership in labor or other organizations, but because of actual and threatened violence to property of such respondents and to the ability of such respondents to render continuous service to the public. Respondents specifically deny that any of them has employed any such outside operatives since October, 1936, and that any of the respondents has been or is engaged in any "unfair labor practices" within the meaning of the National Labor Relations Act; and the respondents deny further that the National Labor Relations Act is in any way applicable to any of them.

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162 XI. As to the allegations of Paragraph 18 of the complaint, the respondent New York and Queens Electric Light and Power Company admits that, on or about November 29, 1935, in the exercise of its powers and duties of management, such respondent terminated the employment, among others of its employees, of Martin A. Wersing, Julius A. Greulich, and Michael A. Wagner, and that such respondent has not reinstated any of such three former employees. The respondents deny each and every other allegation of Paragraph 18 of the complaint.

XII. As to the allegations of Paragraph 19 of the complaint, the respondent Consolidated Edison Com-

*Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937*

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pany admits that, on or about January 17, 1936, in the exercise of its powers and duties of management, such respondent (then named Consolidated Gas Company of New York) terminated the employment, among others of its employees, of Stephen L. Solosy; and that such respondent has not reinstated such former employee. The respondent New York and Queens Electric Light and Power Company admits that, on or about June 19, 1936, in the exercise of its powers and duties of management, such respondent terminated the employment, among others of its employees, of William J. Kennedy and John J. Emler, and that such respondent has not reinstated either of such two former employees. The respondents deny each and every other allegation of Paragraph 19 of the complaint.

164

XIII. The respondents deny each and every allegation of Paragraph 20 of the complaint.

XIV. The respondents deny each and every allegation of Paragraph 21 of the complaint.

XV. The respondents deny each and every allegation of Paragraph 22 of the complaint, except that the respondents admit that some employees of the respondents have solicited membership in various labor organizations of their own choosing, including both the International Brotherhood of Electrical Workers and the complainant organization which filed the charge in this case, and that such solicitation may have at times taken place during working hours and on the respondents' property; also, that the respondents have not withheld, or made deductions from, the pay of such employees, on account of time during which they may have engaged in such solicitation during hours of work.

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The respondents deny that any of them has been



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guilty of any interference with or restraint or coercion of employees in the exercise of any right of organization for the purpose of collective bargaining or other mutual aid or protection through representatives chosen by such employees, or has been guilty of any domination or interference with the formation or administration of any labor organization. The respondents allege that they have, at least at all times since the year 1933, recognized  
167 and favored collective bargaining by and for such of their employees as wished to bargain collectively, through representatives of their own choosing. In the year 1933, the respondents publicly announced to their employees that they were privileged to take a secret ballot on the questions whether they wished to establish a system of collective bargaining for such employees as availed themselves of it, and whether they wished to adopt and put in force an electoral system under which the employees, in the various bureaus and departments, would nominate by petition and elect by secret ballot their own representatives for collective bargaining,  
168 wholly without prejudice to the right of any employee to belong also to any labor organization if he saw fit. Upon receiving petitions signed by a majority of their employees, the respondents cooperated with committees of their employees in the development and submission of such a system for collective bargaining and for the election of employee representatives for such purpose. Such a system of nomination and election was adopted and put in force by the employees, in 1933 and early in 1934, and was participated in freely by practically all of the employees, irrespective of the membership of many or some of them in labor organizations. At the request of the elected representatives of the employees, the respondents paid the cost of voting booths, printing,

*Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937*

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ballots, etc., for conducting such elections, permitted the same to be conducted on company property within the normal working hours of some of the employees, permitted the elected representatives of the employees to conduct their bargaining with the management and the other business of the employee councils without deduction from pay for the time spent in so doing, and defrayed the necessary expenses of the employee councils in conducting their business of bargaining with the management. This system was continued in effect by the employees; and the elected representatives were recognized and dealt with by the respondents, from 1933 until the month of April, 1937. Nearly all of the employees continued to vote and take part in the choice of their representatives; and this electoral system was not regarded by the respondents as a "labor organization" or as in any sense a "company union." Nevertheless, in April of 1937, in view of what appeared to be the virtual certainty that a New York State Labor Relations Act would be enacted (Ch. 443 of the Laws of 1937), it became evident to the respondents that they could not continue, under the new law, the payment of the expenses of employees in operating this system for the election of employee representatives, and that the provisions of the new law would, if valid, in effect outlaw and bar any representatives chosen by the employees under the existing plan. Accordingly, on April 20, 1937, notification to this effect was given by the respondents to the then elected representatives of the employees, who were further advised that, if they wished to continue collective bargaining with the management, the representatives of the employees would have to be selected through other instrumentalities conforming to the spirit as well as the letter of the proposed State Labor Relations Act.

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172 *Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937*

At the same time, the respondents announced to their employees that the respondents had recognized the International Brotherhood of Electrical Workers affiliated with the American Federation of Labor as the collective bargaining agency for such of their employees as were, or chose to become, members of that labor organization, but that every employee would continue to have a free choice as to whether he wished to belong to that organization or any other, and as to whether he wished that labor organization to represent him, in collective bargaining or otherwise dealing with the management of the respondents. The respondents deny, however, that they have used any restraint, coercion, intimidation, domination or interference, to induce employees to become members of that labor organization. Respondents further allege that, since April 20, 1937, they have severally negotiated collective bargaining agreements with the International Brotherhood of Electrical Workers and their respective local unions of that labor organization, in behalf of such employees of the respondents as belong to the International Brotherhood of Electrical Workers and such local unions; and that the membership of such local unions is believed by the respondents to represent more than a majority of the employees of each respondent. Such labor agreements negotiated with the International Brotherhood of Electrical Workers have in most instances been executed by and in behalf of both the respondents and the International Brotherhood of Electrical Workers and its local union, but in a few instances are in-course of execution at the time of this answer.

XVI. The respondents deny each and every allegation of Paragraph 23 of the complaint.



*Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937*

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XVII. The respondents deny each and every allegation of Paragraph 24 of the complaint.

#### AND FOR A FIRST DEFENSE

XVIII. The respondents repeat and reallege each of the denials and averments set forth in Paragraphs I-XVI, both inclusive, with the same force and effect as though here set forth in full.

176

XIX. The respondents jointly and severally allege that the National Labor Relations Board has no jurisdiction, power or authority over the respondents or over the subject-matter of the complaint and charge and has no jurisdiction, power or authority to hear and determine the same, and that the labor practices of the respondents, alleged in the complaint, are not shown to affect "commerce" as defined in the National Labor Relations Act; and upon the further ground that such matters and things as are complained of are under the jurisdiction of the State of New York and not of the Federal Government, and that the Legislature of the State of New York, has, upon the recommendation of The Governor, enacted an Act entitled "An Act to amend the labor law; in relation to establishing a State Labor Relations Board to promote equality of bargaining power between employer and employee and to diminish the causes of industrial disputes by encouraging collective bargaining, and making an appropriation to the Department of Labor" (Chapter 443 of the Laws of 1937), by which Act any such complaint and charge as to any of the respondents would be exclusively under the jurisdiction of the New York State Labor Relations Board created thereunder. The respondents severally ask that the complaint and the proceeding be dismissed accordingly.

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178 *Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937.*

**AND FOR A SECOND DEFENSE\***

XX. The respondents repeat and reallege each of the denials and averments set forth in Paragraphs I-XIX, both inclusive, with the same force and effect as though here set forth in full.

179 XXI. The respondents jointly and severally allege that, if the National Labor Relations Act be construed, as contended for in the complaint herein, so as to apply to the respondents and to the matters and things alleged in the complaint, and so as to confer upon the National Labor Relations Board jurisdiction and power to hear and determine the same, the Act as so construed and applied is invalid, unconstitutional, and repugnant to the rights of the respondents under the Constitution of the United States.\*

WHEREFORE the respondents jointly and severally pray that the complaint and proceeding herein be dismissed.

180 **CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC.,**

By

O. H. Fogg,  
Vice Chairman.

**BROOKLYN EDISON COMPANY, INC.,**

By

A. AUGUSTUS LOW,  
Executive Vice President.

\* On July 6, 1937, the last day of the hearing, the respondent Companies asked leave to amend their answer so as to plead a third defense, viz., that the making of the Contracts by and with Local Unions representing 30,000 (much more than a majority) of the petitioners' employees, rendered moot the charges of coercion, restraint, etc. This amendment of the answer was allowed, without objection from the Board (S. M. 1432).

*Answer of the Respondent Companies (petitioners  
herein) to the Complaint of the Board as amended to  
June 14, 1937* 181

**NEW YORK AND QUEENS ELECTRIC  
LIGHT AND POWER COMPANY,**

By

L. A. COLEMAN,  
*Executive Vice President.*

**WESTCHESTER LIGHTING COMPANY,**

By

STUART WILDER, 182  
*Vice President.*

**THE YONKERS ELECTRIC LIGHT AND  
POWER COMPANY,**

By

STUART WILDER,  
*Vice President.*

**NEW YORK STEAM CORPORATION,**

By

DAVID C. JOHNSON,  
*President.* 183

**CONSOLIDATED TELEGRAPH AND  
ELECTRICAL SUBWAY COMPANY,**

By

E. S. CALLAHAN,  
*President.*

**WHITMAN, RANSOM, COULSON & GOETZ,**

*Attorneys for Respondents,*

Appearing specially and only for the  
purposes stated in the Notice of  
Motion dated May 17, 1937,

No. 40 Wall Street,  
New York City.



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The post-office addresses of the respondents are as follows:

Consolidated Edison Company of New York, Inc.,  
4 Irving Place, New York City.

Brooklyn Edison Company, Inc., 380 Pearl Street,  
Brooklyn, N. Y.

**185** New York and Queens Electric Light and Power  
Company, 28-19 Bridge Plaza North, Long Island  
City, N. Y.

Westchester Lighting Company, The Yonkers Elec-  
tric Light and Power Company, 9 South First  
Avenue, Mt. Vernon, N. Y.

New York Steam Corporation, 130 East 15th Street,  
New York City.

Consolidated Telegraph and Electrical Subway  
Company, 54 Lafayette Street, New York City.

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*Answer of the Respondent Companies (petitioners herein) to the Complaint of the Board as amended to June 14, 1937.*

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STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.:

OSCAR H. FOGG, being duly sworn, deposes and says: that he is an officer, to wit, the Vice-Chairman of the Board of Trustees of Consolidated Edison Company of New York, Inc., one of the respondents in the above-entitled proceeding, and the Vice-Chairman or a member of the Board of Directors of Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, and Consolidated Telegraph and Electrical Subway Company, the other respondents in the above-entitled proceeding; that he has read the foregoing Answer, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated to be alleged on information and belief, and that as to those matters he believes it to be true; and that the sources of his information and grounds of belief are records and papers of the respondents and communications from and conversations with other officers and employees of the respondents.

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189

OSCAR H. FOGG.

Sworn to before me this }  
16th day of June, 1937. }

MARION SEITZ,  
Notary Public.

New York County Clerk's No. 657.

Register's No. 9-S-682.

Commission Expires March 30, 1939.

(Seal)



190 Order of the Board dated September 29, 1937, Transferring the Proceeding to the Board

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR  
RELATIONS BOARD

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 29th day of September, 1937.

Present:

191 J. WARREN MADDEN, *Chairman*,  
DONALD WAKEFIELD SMITH,  
EDWIN S. SMITH.

IN THE MATTER

of

CONSOLIDATED EDISON COMPANY, INC.,  
and its affiliated companies,

and

192 UNITED ELECTRICAL & RADIO WORKERS  
OF AMERICA, LOCAL NO. 1212, C.I.O.

Case No. C-245

A hearing having been duly held in this proceeding before a Trial Examiner duly appointed, and the Board deeming it necessary, in order to effectuate the purposes of the National Labor Relations Act, that the proceeding be transferred to and continued before it.

IT IS HEREBY ORDERED, in accordance with Section 37 of Article II of National Labor Relations Board Rules and Regulations—Series 1, as amended, that this proceeding be transferred to and continued before the Board.

By direction of the Board:

BENEDICT WOLF,  
Benedict Wolf,  
*Secretary.*

(Seal)

Decision, Findings of Fact, Conclusions of Law, and the Order, of the National Labor Relations Board, dated November 10, 1937

United States of America  
Before the  
National Labor Relations Board

IN THE MATTER

of

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated Companies: BROOKLYN EDISON COMPANY, INC., NEW YORK AND QUEENS ELECTRIC LIGHT AND POWER COMPANY, WESTCHESTER LIGHTING COMPANY, THE YONKERS ELECTRIC LIGHT AND POWER COMPANY, NEW YORK STEAM CORPORATION, CONSOLIDATED TELEGRAPH AND ELECTRICAL SUBWAY COMPANY,

and

UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, affiliated with the Committee for Industrial Organization.

Case C-245

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195

Mr. DAVID A. MOSCOVITZ and Mr. WILL MASLOW,  
*for the Board.*

WHITMAN, RANSOM, COULSON & GOETZ, by Mr. WILLIAM L. RANSOM and M. JACOBUS M. BERKSON, of New York City, *for the Respondents.*

Mr. LOUIS B. BOUDIN and Mr. SIDNEY ELLIOTT COHN, of New York City, *for the United.*

Mr. JOSEPH FRIEDMAN, *of Counsel to the Board.*

DECISION AND ORDER

Statement of the Case

Upon charges duly filed by United Electrical and Radio Workers of America, herein called the United, the

232 Decision, Findings of Fact, Conclusions of Law, and the Order, of the National Labor Relations Board, dated November 10, 1937.

**Cable.** In 1936 the respondents purchased \$4,659,840 worth of cable, of which approximately 30 per cent came from factories situated outside the State of New York.

233 **Other materials and equipment.** In 1936 the respondents purchased substantial quantities of other materials, equipment, and supplies, including distribution and power transformers, switches, steel pipe, concrete, cement, electric meters, gas meters, poles, incandescent lamps, and similar items. Part of these items were purchased from concerns situated outside the State of New York, and part from dealers within the State of New York.

**E. Dependence of Particular Consumers on Electric Energy and Gas Supplied by the Respondents**

234 The written stipulation for the determination of the question of jurisdiction entered into by counsel for the Board and counsel for the respondents sets forth data concerning a number of particular consumers which show the dependence on the electric energy and gas supplied by the respondents of various types of important businesses engaged in interstate and foreign commerce and communication and the disastrous effect on such commerce and communication that would result from a cessation of the flow of power from the respondents, such as would tend to accompany a labor dispute between the respondents and their employees.

**Railroads.** The respondents supply electric energy to the New York Central Railroad, an interstate railroad. The electricity is used by the Railroad Company in part for the lighting and operation of the Grand Central

Decision, Findings of Fact, Conclusions of Law, and the Order, of the National Labor Relations Board, dated November 10, 1937

235 **Terminal,** a terminal for interstate and intrastate trains operated by the Railroad Company, in part for the lighting and operation of various structures on terminal lands, and in part for the electric operation of both intrastate and interstate passenger trains from Harmon, New York, to the Grand Central Terminal and from the Grand Central Terminal to Harmon, New York. No steam-propelled passenger trains ordinarily operate between the Grand Central Terminal and Harmon, New York. Electricity supplied by the respondents is also used for the air-conditioning of Pullman cars attached to interstate trains in the yards of the Railroad Company in New York City. In 1936 the Railroad Company purchased from the respondents 145,593,421 kilowatt hours for all purposes. The respondents deliver all of the electric energy to the Railroad Company at designated locations in the State of New York.

236 The respondents also supply electric energy to the New York, New Haven, and Hartford Railroad Company, an interstate railroad, which utilizes it for the operations of its freight terminals, for both interstate and intrastate trains, and for the operation of passenger trains in and out of Grand Central Terminal, many of which trains operate on interstate runs. The total electric energy supplied to the New Haven Railroad in 1936 was 58,793,983 kilowatt hours and was delivered at designated locations in the State of New York.

237 The respondents also supply electric energy to the Hudson and Manhattan Railroad Company, which utilizes it for the lighting and operation of its terminal buildings, for the operation of a rapid transit railroad which runs for a distance in New York City and thence by tunnel to New York City and Hoboken, New Jersey, and



196 *Decision, Findings of Fact, Conclusions of Law, and the Order, of the National Labor Relations Board, dated November 10, 1937*

197 National Labor Relations Board, herein called the Board, by Elinore Morehouse Herrick, Regional Director for the Second Region (New York City), issued its complaint dated May 12, 1937, against Consolidated Edison Company of New York, Inc., and its affiliated Companies: Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, and Consolidated Telegraph and Electrical Subway Company, herein called the respondents, alleging that the respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

198 In respect of the unfair labor practices, the complaint in substance alleged (1) that the respondents had employed and were employing industrial spies for the purpose of disclosing to the respondents the activities of their employees in and on behalf of labor organizations; (2) that on or about November 29, 1935, the respondents discharged, and thereafter refused to reinstate, Martin A. Wersing, Julius A. Greulich, and Michael Wagnér, employees of the respondents, and on or about June 19, 1936, discharged, and thereafter refused to reinstate, William J. Kennedy and John Emler, employees of the respondents, for the reason that they had engaged in concerted activities with other employees of the respondents for their mutual aid and protection; and (3) that the respondents had interfered with, restrained, and coerced their employees in the exercise of their right to form, join, and assist labor organizations of their own choosing and were continuing to do so, had contributed

*Decision, Findings of Fact, Conclusions of Law, and the Order, of the National Labor Relations Board, dated November 10, 1937* 199

and were contributing financial and other support to the International Brotherhood of Electrical Workers, herein called the I. B. E. W., and had coerced and were coercing their employees to join or assist the I. B. E. W.

Copies of the complaint and of notice of a hearing to be held on June 1, 1937, at New York City, both dated May 12, 1937, were duly served upon the respondents, upon the United, and upon the I. B. E. W. On May 25, 1937, the Regional Director issued and duly served upon the parties and the I. B. E. W. an amended notice of hearing, specifying that the hearing would be held on June 3, 1937, instead of on June 1, 1937. 200

On May 17, 1937, the respondents, appearing specially, filed a motion to dismiss the complaint for lack of jurisdiction, on the ground that the Act was inapplicable to the respondents and their labor relations with their employees, for the reason, it was asserted, that the respondents conduct a local, intrastate business and are, therefore, subject exclusively to the New York State Labor Relations Act,<sup>1</sup> which was to become effective on July 1, 1937. The motion included a request that the motion be heard and determined by the Board prior to the hearing on the complaint, and was accompanied by an affidavit of Oscar H. Fogg, vice-chairman of the board of trustees of the respondent Consolidated Edison Company of New York, Inc., and vice-chairman or member of the board of directors of each of the affiliated companies named as respondents, containing a statement of facts tending to show that the respondents' business was of an intrastate character. On June 2, 1937, the 201

<sup>1</sup> Chapter 443 of the Laws of 1937. The State Act is also designated as Article 20 of the Labor Law.

**202** *Decision, Findings of Fact, Conclusions of Law, and the Order, of the National Labor Relations Board, dated November 10, 1937*

Board denied the respondents' request for a prior and separate hearing by the Board on the motion to dismiss the complaint.

**203** Pursuant to the amended notice, a hearing was held at New York City on June 3, 10, 11, 14, 15, 16, 17, 23, 24, and July 6, 1937, before Robert M. Gates, duly designated as Trial Examiner by the Board. The Board, the respondents, and the United were represented by counsel and participated in the hearing. The I. B. E. W. did not appear at the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing on the issues was afforded all the parties.

**204** At the commencement of the hearing, argument was heard on two separate petitions to intervene filed with the Regional Director prior to the hearing by The Independent Gas and Electric Workers Union of Westchester County and by Independent Gas and Electric Union, both labor organizations claiming to have filed with the Regional Director informal charges against the respondents. The complaint herein was not based on these informal charges, but only on the formal charge filed by the United. Upon separate objections by counsel for the Board, the respondents and the United, the Trial Examiner reserved decision thereon, but on June 10, 1937, the second day of the hearing, he denied both petitions to intervene. The ruling is hereby affirmed.

At the commencement of the hearing, the respondents reserved their objections to the jurisdiction of the Board and noted an exception to the order of the Board denying a prior and separate hearing on the respondents' motion to dismiss the complaint. At the close of the presenta-



*Decision, Findings of Fact, Conclusions of Law, and the Order, of the National Labor Relations Board, dated November 10, 1937*

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tion of the Board's case, the motion to dismiss the complaint for lack of jurisdiction was renewed by the respondents and was denied by the Trial Examiner. The ruling is hereby affirmed.

On June 10, 1937, the second day of the hearing, the Trial Examiner allowed the complaint to be amended to include allegations of the discriminatory discharge of Stephen L. Solosy, without objection by the respondents other than their general reservation of objections to the jurisdiction of the Board. On June 14, 1937, the respondents filed a verified answer; in which they reserved their objections to the jurisdiction of the Board and in substance denied engaging in the unfair labor practices alleged in the complaint, setting forth in addition affirmative allegations in defense thereof.

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Upon the completion of the presentation of the Board's case on June 24, 1937, counsel for the respondents requested an adjournment until July 6, 1937, to enable him adequately to prepare and present the respondents' case, and in particular to secure the testimony of Floyd L. Carlisle and Harold Dean, the testimony of both of whom was asserted to be indispensable. It was shown that Carlisle, who was chairman of the board of trustees of Consolidated Edison Company of New York, Inc., and had been in charge of the respondents' labor policies and negotiations, was in France attending a meeting of the World Power Conference and would return to New York City on July 5, 1937; and that Dean, who was vice-president of New York and Queens Electric Light and Power Company and in charge of the execution of the policies of that company which resulted in the alleged discriminatory discharges of five of the persons named

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**208** *Decision, Findings of Fact, Conclusions of Law, and the Order, of the National Labor Relations Board, dated November 10, 1937*

in the complaint, was in Milwaukee attending the annual conference of the American Institute of Electrical Engineers and was thus unavailable as a witness at that time. The only reason offered for not calling other witnesses at the close of the Board's case was that the Board had completed the presentation of its case sooner than was anticipated by the respondents. The Trial Examiner granted an adjournment until July 6, 1937, for the purpose of receiving the testimony of Carlisle only, and reserved until that time decision on the question whether the testimony of Dean and other witnesses would be taken when the hearing was resumed on July 6, 1937. The Trial Examiner granted permission to the respondents to present the matter of taking the testimony of witnesses other than Carlisle on July 6, 1937, directly to the Board in the meantime. This was done by the respondents in a letter to the Board, dated June 28, 1937. The Board replied in a letter, dated July 2, 1937, stating that it would permit both Carlisle and Dean to testify on July 6, 1937, but would not permit any other witnesses to testify, on the ground that such other witnesses should have been produced on the completion of the presentation of the Board's case on June 24, 1937. After the testimony of Carlisle and Dean had been received on July 6, 1937, counsel for the respondents called a witness to testify concerning the alleged discriminatory discharge of Stephen L. Solosy. The Trial Examiner refused to allow the witness to testify. The respondents duly excepted to the ruling of the Trial Examiner. The Trial Examiner, however, allowed the respondents to introduce into the record an offer of proof concerning the alleged discriminatory discharge of Stephen L. Solosy.

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After the close of the Board's case, counsel for the Board moved to conform the complaint to the evidence. The Trial Examiner denied the motion in so far as it was directed to bringing within the allegations of the complaint the discriminatory discharge of Philemon Ewing, who was not named in the complaint, but concerning whose discharge testimony had been received; but in other respects the motion was granted. The ruling is hereby affirmed. At the same time the Trial Examiner granted the respondent's motion to amend its answer to include as a separate defense allegations that certain contracts executed by the respondents and certain locals of the I. B. E. W. as of June 15, 1937, after the commencement of the hearing, had rendered moot any controversy raised by the complaint.

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The parties did not avail themselves of the opportunity afforded for argument at the close of the hearing, but thereafter the respondents filed a brief.

By order of the Board, dated September 29, 1937, the proceeding was transferred to and continued before the Board in accordance with Article II, Section 27, of National Labor Relations Board Rules and Regulations—Series 1, as amended.

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During the course of the hearing the Trial Examiner made a number of rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Upon the entire record in the case, the Board makes the following:



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## FINDINGS OF FACT

### I. THE RESPONDENTS AND THEIR BUSINESSES

#### A. Incorporation and nature of business

- 215 Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., and New York and Queens Electric Light and Power Company are New York public utility corporations, having their principal offices and places of business in New York City. They are engaged in the business of supplying electric energy to consumers situated within the Boroughs of Manhattan, The Bronx, and Brooklyn, and a part of the Borough of Queens, within the City of New York. Consolidated Edison Company of New York, Inc. is engaged also in the business (a) of supplying gas to consumers situated in the Boroughs of Manhattan and The Bronx, and a part of the Borough of Queens, and (b) in selling to manufacturers and jobbers in New York City for commercial purposes certain by-products incidental to its manufacture of gas, namely, coke, coke breeze, tar, 216 light oils, and sulphate ammonia. Consolidated Edison Company of New York, Inc., besides being an operating utility company is also a holding company, owning controlling stock interests, as described below, in the other respondents herein. Westchester Lighting Company and The Yonkers Electric Light and Power Company are New York public utility corporations, having their principal office and place of business in Mount Vernon, New York. The former company is engaged in the business of supplying electricity and gas to consumers situated in Westchester County, New York, except the city of Yonkers; and the latter company is engaged in the business of supplying electricity to consumers situated

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in the City of Yonkers, Westchester County, New York. New York Steam Corporation, a New York public utility corporation having its principal office and place of business in New York City, is engaged in the business of supplying steam to consumers situated within a part of the Borough of Manhattan. Consolidated Telegraph and Electrical Subway Company, a New York corporation having its principal office and place of business in New York City, is engaged in the business of constructing, equipping, maintaining, and operating, under contracts with the City of New York, underground ducts or conduits for the reception of electrical conductors (other than telegraphic and telephone conductors) in the Boroughs of Manhattan and The Bronx. Consolidated Edison Company of New York, Inc., and Westchester Lighting Company occupy space in such ducts and pay rent for the space so occupied.

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### **B. Stock Ownership**

Consolidated Edison Company of New York, Inc., conducts the electric business formerly conducted by The New York Edison Company, Inc. (including that of the latter's predecessors, The New York Edison Company and The United Electric Light and Power Company) and by Bronx Gas and Electric Company, merged into Consolidated Edison Company of New York, Inc., in 1936; also the gas business formerly conducted by it under the name of Consolidated Gas Company of New York and that conducted by various gas companies in the Boroughs of Manhattan and The Bronx and part of the Borough of Queens, merged in 1936 into Consolidated Edison Company of New York, Inc. The latter

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company owns more than 90 per cent of all the outstanding voting stock of each of its affiliated companies named as respondents herein.

**C. Unitary and Integrated System**

221 The respondents are commonly referred to as the Consolidated Edison Company group of companies or the Consolidated Edison Company System. They constitute and are operated as a unitary and integrated system.

222 *System management.* A majority of the board of directors of each of the respondents, other than Consolidated Edison Company of New York, Inc., is made up of trustees or officers of the latter company. Each of the respondents has executive and operating officers and employees who are not officers of Consolidated Edison Company of New York, Inc., but who take part, with the trustees and officers of the latter company, in the discussion and determination of the major and general policies of the respondents. The major labor policies, among others, of the respondents are thus discussed and determined, but are locally administered and applied by the board of directors and executive officers of each respondent, in a manner not inconsistent with the general policies as determined by and for the respondents as a whole.

*Unified operations of System.* The companies of the Consolidated Edison Company System have for many years been under a unified ownership, management, and operation. Thus, the gas operations of the System have for many years been carried on in accordance with the



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terms of joint facility arrangements; and the manufacturing plants, holder-stations, pumping stations, transfer and distribution lines, and other properties of the various companies have been and are operated as an interconnected system. Similarly, the generating facilities of the electric companies in the System have been and are operated as a unit for the System electric load, through the medium of a System operator or load dispatcher, to secure the greatest over-all economy of production consistent with the highest degree of continuity. Additional electric energy is purchased from New York Light and Power Company, which is not affiliated with the respondents, under interchange of power arrangements established with that company, in the interests of assuring continuity of service to the public and as a means of providing for the electric requirements of the System. New York Steam Corporation has a connection with one of the electric generating stations of Consolidated Edison Company of New York, Inc., from which is made available an additional supply of steam for resale to its customers.

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*Location of respondents' properties.* The respondents' electric generating stations, sub-stations, gas manufacturing plants, gas holder-stations, steam generating plants, service buildings, shops, store-rooms, garages, and similar structures are all maintained and operated within the State of New York, and principally in New York City and Westchester County. All transmission and distribution facilities and equipment owned by the respondents and all other property owned by the respondents and used in their business are located in New York City or Westchester County. All meters in use by any of the respondents are located and are read on the

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premises of consumers situated in New York City and Westchester County; and all metering apparatus and equipment furnished by the respondents are similarly located.

- 227 *Exclusiveness of respondents' service.* In 1936 the System supplied 97.5 per cent of the total electric energy sold by central station companies in New York City, and practically all of the electric energy sold by central station companies in Westchester County. It supplied 55.3 per cent of the total gas supplied to consumers in New York City. It did not supply any gas to consumers in the Boroughs of Brooklyn and Richmond, and the larger part of the Borough of Queens. On the other hand, its percentage of the total gas supplied to consumers in Manhattan and The Bronx is very much greater than 55.3 per cent. Westchester Lighting Company is the only public utility supplying gas in Westchester County; and New York Steam Corporation is the only central-station steam utility in New York City.

- 228 *Annual production, sales, and employment totals.* In 1936, the System generated and purchased 6,038,989,792 kilowatt hours of electric energy and sold 5,130,976,460 kilowatt hours. The total revenue from the sale of electric energy amounted to \$180,448,596.19. During the same period the System produced 39,286,022,000 cubic feet of gas, and sold 38,016,134,000 cubic feet. The total revenue from the sale of gas amounted to \$41,193,261.69. The total revenue from the sale of steam during 1936 was \$10,761,341.04. During the same period the revenue from the sale of coal and oil by-products amounted to \$3,485,338.01, but such revenue is treated by the respondents as an abatement of production expenses.

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As of April 17, 1937, the respondents employed 42,101 employees. The total annual payroll for 1936, including annuities and separation allowances paid, amounted to \$81,891,990.40.

#### **D. Purchase of Materials in Interstate Commerce**

*Coal and oil.* The raw materials used by the respondents in the production of all their electric energy, gas, and steam are coal and gas-oil. In 1936 the respondents purchased 4,975,452 tons of coal at a cost of \$23,224,761, and purchased 114,370,343 gallons of oil. All the coal was mined outside the State of New York and transported from points outside the State of New York to the plants of the respondents by rail and barge or by rail and steamship. All the oil is produced at wells and refineries outside the State of New York and transported in barges from points outside the State of New York to the respondents' gas plants in New York City. The respondents do not own or operate any ships, barges, tugs, or freight-cars for the transportation of gas and oil from their points of origin outside the State of New York to the respondents' stations or storage yards. The respondents maintain unloading and coal conveying equipment at their stations or storage-yards and the respondents' employees unload the coal from the boats. The shipment of coal and oil to the respondents is practically continuous throughout the year.

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*Copper.* In 1936 the respondents purchased \$53,160 worth of copper for electrical construction and operation. The copper is mined outside the State of New York and a substantial portion thereof is purchased from concerns situated outside the State of New York.



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for the operation of an interurban railroad from its terminal in New York City through the tunnel under the North River to Jersey City and Newark, New Jersey. The total electrical energy supplied to this Railroad Company in 1936 was 57,221,097 kilowatt hours and was delivered at designated locations in the State of New York.

- 239 The respondents also supply electric energy to the Lehigh Valley Railroad Terminal in New York City for the operation of its interstate railroad terminal.

Steam service supplied by New York Steam Corporation, a respondent herein, is used to operate compressors, for the operation of switches in the interstate railroad tunnel of the Pennsylvania Railroad Company under the North River.

- 240 *Navigation in New York harbor.* The respondents supply electric energy to the Federal Government for the operation in New York harbor of six lighthouses, 8 beacon or harbor lights, the United States Barge office, the United States Customs Houses, various warehouses, and Governor's Island. They also supply electricity to the City of New York for the operation of devices used as aids to navigation, namely, lights on various bridges and on the ends of various piers and docks. The respondents also supply electric energy to a majority of the piers of trans-Atlantic and coastal steamship companies, along the East River and the North River, for lighting, freight-handling, and related uses. They also supply electricity to the Port of New York Authority for the operation of its terminal; the Holland Tunnel, an interstate vehicular tunnel under the Hudson River; and the other projects under its supervision.

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**Ferries.** The respondents supply electricity to various ferry slips from which steam-propelled ferries operate on the Hudson River between New York and New Jersey. The electricity is used in the operation of waiting rooms, ticket offices, signs, and approaches. They also supply electricity, under contract with the Federal Government, to ferry slips from which ferries operate in waters other than the Hudson River.

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**United States post-offices.** The respondents supply electric energy to the Federal Government for the operation of its General Post Office in New York City and some 132 branch post-offices in New York City and Westchester County. The electricity is used for operating pneumatic tubes between postal stations, equipment in stations, including conveyor belts, elevators, ventilators, and similar equipment. Postal operations are conducted on a 24-hour basis.

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**Telegraph.** The respondents supply electric energy to the Western Union Telegraph Company and its some 210 branch offices in New York City and Westchester County, and to the Postal Telegraph Company and its some 140 branch offices in New York City and Westchester County. The electricity is used for general lighting and power purposes and for the operation of apparatus used in the transmitting and receiving of telegraphic messages, both local and interstate.

**Telephone.** The respondents supply electric energy to the New York Telephone Company for the operation of its various buildings, offices, and exchanges in New York City and Westchester County. The electricity is used to operate the equipment utilized in the transmitting and receiving of interstate and local communications.

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**Radio.** The respondents supply electric energy to RCA Communications, Inc., a subsidiary of Radio Corporation of America, which, among other uses, is used to operate the switchboards for its trans-Atlantic radio service. Similarly, the respondents supply electric energy to Columbia Broadcasting System, Inc., and to its subsidiary, Atlantic Broadcasting Company, for the purpose, among others, of operating equipment which broadcasts to other states as well as the State of New York.

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**Airports.** The respondents supply electric energy to the Floyd Bennett Air Field, for such purposes as building lighting, field illumination, the operation of a radio beam, obstruction lighting, and the operation of hangar machine shops.

**Newspapers.** The respondents supply electric energy to the New York Times Company for the operation of all the power equipment in the printing plant and for general lighting purposes. The newspapers printed and published by this company are circulated throughout the world.

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**Dow-Jones Tickers.** The respondents supply electric energy to Dow-Jones and Company, Inc., for the operation of its financial news ticker service.

**New York Stock Exchange.** The respondents supply electric energy to the New York Stock Exchange Building Company, and a related concern, Stock Exchange Building Company, located in the same premises for light and power in the operation of the Stock Exchange and of the Stock Exchange ticker system for the sending out of stock quotations and transactions. Through this system stock exchange quotations are made instantly available throughout the country by telegraph.



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### **F. Relation to Commerce**

On January 15, 1936, an interruption of the alternating current service in parts of the Boroughs of Manhattan and The Bronx was produced by a short circuit in the respondents' Hell Gate generating station. Service to some 40,000 customers, out of about 2,000,000 electric customers of the respondents, involving about ten per cent of the load, was affected. Although other generating plants of the System took over the load from such units at the Hell Gate station as were affected by the short-circuit, several telephone exchanges and branch post-offices, and various industrial and commercial concerns in the area affected, experienced a partial or total interruption of electric service, as the restoration of service required considerable work in the streets, on transformers, and on consumers' premises (fuses, motors, etc.) to repair the effects of the impact of the short circuit on the distribution lines in the area affected, as well as work in the electrical galleries at Hell Gate.

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This incident coupled with the fact that the respondents supply 97.5 per cent of the total electric energy sold in New York City by central station companies and the respondents' contention at the hearing and in their brief that the operations of the System could easily be endangered and seriously dislocated by a single one of certain of its employees, is indicative of the effect which a labor dispute between the respondents and their employees might have upon the operations of the respondents and the multitude of businesses whose operations are dependent on them for electric energy.

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It thus becomes evident from all the above findings (1) that the respondents receive vast quantities of coal

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and oil and quantities of copper, cable, and other commodities in interstate commerce; (2) that the highly industrial and commercial area of New York City and Westchester county, the former the largest shipping, transportation, and commercial center in the United States, is almost entirely dependent on the Company as a commercial source of electric energy and steam, while the Boroughs of Manhattan and The Bronx, a part of the Borough of Queens, and Westchester County are almost entirely dependent on the respondents for gas; (3) that a labor dispute between the respondents and their employees interrupting the respondents' operations would seriously affect the flow of vast quantities of coal and gas-oil, and quantities of copper, cable and other commodities, in interstate commerce; (4) that a cessation of the flow of power from the respondents, such as would tend to accompany a labor dispute between the respondents and their employees, (a) would in a short time paralyze the operations of many of the instrumentalities of interstate and foreign commerce and communication in and around New York City, and thereby also paralyze the operations of most of the businesses situated in the area served by the respondents and engaged in shipping and receiving commodities in interstate and foreign commerce, and would curtail the United States mail service, including mail carried in interstate and foreign commerce, and (b) would directly cause the cessation or curtailment of the operations of the businesses served with power by the respondents and engaged in shipping and receiving commodities in interstate or foreign commerce.

Expressed concisely, a labor dispute between the respondents and their employees interrupting the respon-

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dents' operations would not only affect the flow of the large quantities of coal and oil which they receive in interstate commerce, but might be substantially equivalent to the effect on interstate and foreign commerce and communication which would be caused by simultaneous labor disputes in the respondents' business and in all the businesses served by the respondents that are engaged in operating the instrumentalities of interstate and foreign commerce and communication and all the businesses engaged in shipping and receiving commodities in interstate or foreign commerce.

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## **II. THE UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA**

The United Electrical and Radio Workers of America, which has filed the charge upon which the complaint herein is founded, is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership the employees of the whole electrical and radio industry in the United States. Local No. 1212 of the United admits to membership only employees of the respondents.

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## **III. THE UNFAIR LABOR PRACTICES**

### **A. Background of labor organization among the respondents' employees**

In the latter part of 1933 and the early part of 1934 organizations known as Employees' Representation plans, herein called the Plans, were established with the assistance of the respondents among the employees of each of the respondents and of each of the companies



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which were merged in 1936 into Consolidated Edison Company of New York, Inc. The Plans appear to have been formed as a means of purported compliance with the National Industrial Recovery Act and the codes adopted thereunder for the power industry.

257 There is specific oral and documentary evidence concerning the formation and operation of the Plan among the employees of Bronx Gas and Electric Company, which was merged in 1936 into Consolidated Edison Company of New York, Inc., and also ample evidence that the formation and operation of the Plans among the employees of the various other companies in the respondents' system conformed to a similar pattern. The following narrative of the establishment of the Plan among the employees of Bronx Gas and Electric Company is thus typical of the Plans established at approximately the same time throughout the companies of the respondents' system, including Consolidated Telegraph and Electrical Subway Company.

258 One day in the latter part of 1933, during working hours, several employees of Bronx Gas and Electric Company were notified by their supervisors to report to the president and the vice-president of the Company. On their arrival they were informed by the president and the vice-president that they, the employees, had been sent on this mission by their fellow employees for the purpose of instituting a procedure for collective bargaining. They were given petitions to circulate among the employees for signatures. The petitions bore captions stating in substance that the subscribers desired to have a poll among the employees to determine upon the establishment of a means of collective bargaining.

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Harold Straub, one of the employees engaged in procuring signatures, testified that his foreman placed a company car at his disposal for contacting employees and that he devoted two full days to the task, for which he was paid his regular salary as a lineman. After sufficient signatures to the petitions had been obtained, a poll was conducted among the employees on the question whether they desired the establishment of the Plan, which had been drafted and distributed by the Company, as a means of collective bargaining. The question having been decided affirmatively, the election of officers was held shortly thereafter. Practically all the employees became members of the Plan, as it was the current sentiment that such action accorded with the desire of the Company. The Company bore the expense of conducting the poll and the election and paid for the printing of the petitions, circulars, and copies of the constitution and by-laws of the Plan and for the time devoted to the Plan by sundry employees.

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The constitution and by-laws of the Plan stated that its purpose was "to provide means by which employees of the Company, through representatives of their own choosing, may deal collectively with the management of the Company" and that "collective bargaining under this Plan may relate to wages, hours of labor, working conditions, health, safety, education, recreation, and like matters affecting employment, together with the adjustment of grievances arising out of the relations of Employees with the Management." Membership was restricted to employees, and was to cease with termination of employment. There were no dues. The Plan divided the Company into a number of departments and provided for a department council and a general council. The

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former consisted of representatives elected by the employees in each department, in the proportion of one representative for every 50 members of the Plan in the department. The general council consisted of the chairmen of the department councils. In the larger companies of the respondents' system, there were also bureau councils, bureaus being subdivisions of departments. In voting each member of the general council was entitled to cast one vote for each member of the Plan represented by him.

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Similar Plans were established in all the Companies of the respondents' system and in a substantially similar fashion. The respondents bore the expenses of all the meetings and elections, both of which took place on Company time and property, of clerical and stenographic services, printing, and of the entire functioning of the Plans. The members of the general and department councils were paid their regular salaries by the respondents for all time devoted to Plan affairs. The chairmen of the general councils devoted most of their time to Plan work, and in the larger companies both the chairman and the secretary devoted their full time to such work, occupying offices in the respondents' premises, equipped with desks and provided with stenographic service. The chairmen of the general councils and, in the larger companies, the secretary also, were allowed expense accounts which were paid by the respondents as routine matters upon vouchers signed by department heads.

On several occasions meetings of the chairmen of all the general councils were called by the respondents for the purpose of imparting information to be reported to



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their constituents, but never for the purpose of bargaining collectively as a unit. Thus in July 1936, Carlisle, chairman of the board of trustees of Consolidated Edison Company of New York, Inc., and member of the board of directors of each of the respondents herein, called such a meeting to inform it of the restoration of a former pay reduction and, in December 1936, to inform it that there would be no Christmas bonus as had been rumored.

In the early part of 1934, approximately coincidental with the establishment of the Plans, there was formed a labor organization among the employees of the respondents, known as the Brotherhood of Utility Employees, herein called the Independent Brotherhood. It was a national organization, but certain of its locals limited their membership exclusively to the respondents' employees. All six employees named in the amended complaint as having been discriminatorily discharged were members of the Independent Brotherhood, while several of them were organizers of Local No. 103, which had jurisdiction of the employees of New York and Queens Light and Power Company. All six were also members of the Plans and at least one was for a time an officer of the Plan at New York and Queens Light and Power Company. In 1935 certain of these six employees, as stated hereinafter, formulated a petition of grievances, dealing principally with wage increases, for presentation to the management of New York and Queens Electric Light and Power Company. After overcoming the reluctance of the general council, it was finally presented to the management, but nothing was done concerning it. During the same period the Plan members of one of the departments of Consolidated Gas Company, Inc., set up a committee, headed by two members of the Independent 266 267

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**269** Brotherhood, to investigate the Plan with respect to company domination and pursuant to its mandate the committee filed monthly reports of company domination. Convinced that the Plans were dominated by the respondents, the Independent Brotherhood issued and distributed magazines, pamphlets, circulars, and leaflets attacking the Plans as company-dominated unions. Representatives of the Independent Brotherhood also attended all the hearings before the New York Public Service Commission, involving such matters as rates, and claimed an interest therein by reason of their representation of respondents' employees.

**270** Failure to achieve any success as an independent organization induced the several locals of the Independent Brotherhood in March 1936 to consolidate and affiliate with the I. B. E. W. as one local, Local No. B-752. In March 1937 the members of Local No. B-752 voted to affiliate with the United and thereupon one local, Local No. 1212, was chartered with jurisdiction over only employees of the respondents. All the members of Local B-752 became members of the United Local No. 1212. Local No. B-752 was thereupon suspended by the I. B. E. W. In April 1937 the United announced the formation of a utility division and commenced a vigorous campaign to organize the respondents' employees.

At this juncture the respondents instituted a campaign to procure signatures of employees to cards designating their desire for the continuance of the Plans. This campaign was interrupted by the decisions of the United States Supreme Court sustaining the validity of the National Labor Relations Act, for thereupon the respondents discontinued their campaign and abruptly altered their labor policy, as described below.

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**B. Events between April 12, 1937, and the date of execution of contracts with the I. B. E. W.**

After the United States Supreme Court on April 12, 1937, rendered the decisions sustaining the validity of the National Labor Relations Act, Carlisle, who was in charge of the respondents' labor policy, had two conferences concerning the recognition of the I. B. E. W. with D. W. Tracy, the International president of the I. B. E. W. On April 16, 1937, Tracy dispatched a letter to Carlisle demanding recognition of the I. B. E. W., accompanied by a proposed contract providing for recognition of the I. B. E. W. as the representative of its members, a five per cent increase in wages, and a procedure for settling grievances which outlawed strikes and lockouts. On the morning of April 20, 1937, Carlisle called a convention in the board room of Consolidated Edison Company of New York, Inc., of the members of all the general councils of all the Plans, at which he announced that in view of the decisions of the United States Supreme Court a continuance of the Plans with the financial support of the respondents would constitute a violation of the spirit of the National Labor Relations Act, and more particularly, of the provisions of the Doyle-Neustein Bill, which he termed a little Wagner Act, which was then pending in the Legislature of the State of New York and appeared almost certain of enactment. He informed them that therefore he intended to recognize the I. B. E. W. In response to questions from the floor, Carlisle declared that employees were free to join any labor organization, but that the respondents intended to recognize the I. B. E. W. Various comments from the floor indicated that the Plan repre-

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representatives considered the sudden recognition of the I. B. E. W. as a means of coercing them into transferring their allegiance to the I. B. E. W. Carlisle refused the request of several Plan representatives for a delay of the recognition of the I. B. E. W. until the employees had had an opportunity to discuss the matter.

**275** Harold Straub, chairman of the general council of the Plan at Bronx Gas and Electric Company asked Carlisle whether it was not true that he had hitherto considered unions as unnecessary evils, but now, in view of the United States Supreme Court decisions and the pending Doyle-Neustein Bill, as necessary evils, and as between the I. B. E. W. and the United he preferred that the employees join the I. B. E. W. Carlisle said that this was a very apt statement of his position. Straub testified that Carlisle stated to him also that he thought that the Labor Relations Board of the State of New York would be composed preponderantly of men in sympathy with the American Federation of Labor and hence that it was the part of wisdom to recognize the I. B. E. W. When Carlisle, himself, testified, he was not specifically questioned on direct examination concerning Straub's testimony on these particular points. Straub also asked Carlisle why recognition was being accorded the I. B. E. W. when its membership among the respondents' employees was negligible. Carlisle replied that the I. B. E. W. had some members and would soon have a great many more. Carlisle, himself, testified that at the time he recognized the I. B. E. W. he knew that its organization among the respondents' employees was incomplete and that the formation of locals and the procurement of membership was to follow recognition and that when that was accomplished contracts with the

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various locals would be executed. He also testified that at this time he knew that the members of Local B-752 had transferred their allegiance to the United which had commenced a vigorous campaign for membership. It is quite clear that recognition of the I. B. E. W. under these circumstances was intended as a blow to the United, as an aid to the I. B. E. W., and as a strong indication to the employees of the union favored by the respondents.

After Carlisle left the conference he dispatched a letter to Tracy recognizing the I. B. E. W. along the lines of the proposed contract. News of this letter appeared in the early afternoon papers, which led many of the Plan representatives to believe that he had formally recognized the I. B. E. W. even before he had called the conference of general councilmen. The conference continued for a time after Carlisle's departure, and speeches were made characterizing recognition of the I. B. E. W. as a design to force the employees into the I. B. E. W. Upon the adjournment of the conference, the general councilmen proceeded to a meeting of the general council of Consolidated Edison Company of New York, Inc., where the chairman narrated the above events. The general opinion of this meeting also was that recognition of the I. B. E. W. was intended to force membership in the I. B. E. W.

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On the afternoon of the same day, Straub called on Colonel Stilwell, vice-president of Consolidated Edison of New York, Inc., with whom Straub, as chairman of the general council of the Plan at Bronx Gas and Electric Company, had discussed Plan matters since the merger of the latter company in 1936 into Consolidated Edison Company of New York, Inc. Stilwell said that recognition of the I. B. E. W. would be a blow to the Com-

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mittee for Industrial Organization, of which the United was an affiliate, and was so intended, and that it would be a wise move for the Plans and the employees to go over to the I. B. E. W. and obtain control of it. Upon Straub's request he gave him the name and address of G. M. Bugniazet, International secretary of the I. B. E. W., with whom he could confer concerning ways and means of switching the Plan at Bronx Gas and Electric Company over to the I. B. E. W. The following day 281 Straub called at the address, but merely discussed the aims and policies of the I. B. E. W. with a representative of the I. B. E. W. Later that same day Straub called a meeting of a number of members of the Plan at the Bronx Gas and Electric Company and informed them of his actions. He found among them a strong sentiment for the United and for an independent union with no outside affiliation, while several of them complained that their foremen were applying pressure in behalf of the I. B. E. W.

On the following day, April 22, a conference of 400 282 employees, mostly members of the various general councils, who, as we have already indicated, were always free to leave their work for Plan affairs, was held in the auditorium of Consolidated Edison Company of New York, Inc., building on Irving Street. Carlisle had been invited to attend, and while awaiting his arrival the men discussed the matter. Three views were presented. Some favored the I. B. E. W., others the United, and others an independent union with no outside affiliation. A motion for a secret ballot on the question among those present at the conference was carried. William P. Ganley, co-chairman of the general council of the Plan at Consolidated Edison Company of New York, Inc., and



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presiding officer of this meeting, took no action, however. The meeting was adjourned to the company's cafeteria where Ganley read a telegram from Tracy indicating the manner in which the various Plans could come into the I. B. E. W. as locals with the Plan officers as officers of the locals. The meeting growing somewhat restive, a messenger was sent to summon Carlisle. Upon his arrival Carlisle was subjected to such a barrage of questions that the procedure was adopted of formulating three questions which were addressed to Carlisle by Ganley. The questions and answers were substantially as follows:

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Question: Could a vote be taken among the respondents' employees on the matter?

Answer: If such a vote implied that the respondents would bear the expenses of the election, it could not.

Question: Would he stop department heads and foremen from coercing employees into joining the I. B. E. W.?

Answer: Since he had not issued any order to do so, he would not issue any order to stop.

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Question: Why were I. B. E. W. organizers allowed to enter the plants and solicit employees during working hours while United organizers were denied that privilege?

Answer: The respondents have never policed their buildings and did not intend to begin now.

A shout from the floor accusing Carlisle of having "sold 40,000 employees down the river" evoked considerable applause.

Carlisle departed and shortly thereafter, upon ad-

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287 journing, Ganley announced that there would be another meeting on the following day for the purpose of forming an independent union. A meeting for such purposes was apparently never held, but a meeting of the general councilmen of the Plan at Consolidated Edison Company of New York, Inc., called by Ganley, was held in the board room of the company. At this meeting, Ganley and a number of Plan officials decided to see Tracy at the Hotel Roosevelt in New York City. Tracy informed them that the I. B. E. W. intended to establish seven locals and that each of the Plans could shift over to the I. B. E. W. as a corresponding local, retaining Plan officers as officers of the local. The Plan officials returned to the meeting and 22 general councilmen signed a petition for an I. B. E. W. charter. They then went back to Tracy and a local was chartered. Such was the birth of Local B-829. Thereafter, on May 4, 1937, the 22 signers of the petition held an election among themselves and elected the officers of the Plan to comparable positions in Local B-829.

288 After Local B-829 was chartered on April 23, the officials and councilmen of the Plan at Consolidated Edison Company of New York, Inc., availing themselves to the full of their privileges as Plan officials to devote full time to Plan affairs, commenced a campaign for membership in the I. B. E. W. and were paid their regular salaries by the company. Straub, at first attracted by the idea of going over to the I. B. E. W., grew lukewarm. In the election of May 4, he refused a position as an officer in Local B-829, but continued to assist in procuring members and collecting dues, devoting a large portion of his working hours to the task and receiving his regular salary from the company. He was re-

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proached by Ganley, who had become president of Local B-829, for lack of enthusiasm. Finally, on May 14, he joined the United.

In his talk with Stilwell on April 20, Straub had asked to be transferred to a job under different supervisors, but still in his home area, The Bronx, because in his capacity of chairman of the general council he had antagonized certain supervisors who, upon the dissolution of the Plan, would make it uncomfortable for him. On May 21, 1937, he was transferred to cable-splicing in Manhattan. Upon inquiry he was informed that the transfer was the result of large shifts of workmen in the respondents' system. In this fashion, after he had joined the United and proved himself an obstacle to I. B. E. W. organization in The Bronx, he was transferred from his home area where his influence with the employees was greatest.

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The establishment of all the locals of the I. B. E. W. substantially conformed to the pattern of the establishment of Local B-829, with most of the officers of the Plans throughout the respondents' system becoming officers of the corresponding I. B. E. W. locals and continuing to exercise their privileges as Plan officers for several weeks after the I. B. E. W. locals were chartered, devoting all their working hours to I. B. E. W. organization, using the respondents' offices and secretarial services, and utilizing the respondents' expense accounts. During all this time they were paid their regular salaries by the respondents.

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Evidence specifically adduced at the hearing discloses that the respondents pursued additional methods of coercing their employees into membership in the



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**I. B. E. W.** The department heads and foremen during working hours solicited employees to join the I. B. E. W., and generally assumed the role of I. B. E. W. organizers. The sanction behind the solicitation was clearly revealed in the accompanying advice and admonitions to the effect that the respondents desired them to become members of the I. B. E. W. and that sensible employees would conduct themselves accordingly.

**293** The respondents allowed to I. B. E. W. organizers free access to all the respondents' buildings and permitted them to solicit employees individually and in groups during working hours, while similar privileges were denied to United organizers. I. B. E. W. delegates were also permitted to collect dues on the respondents' premises. They availed themselves, for that purpose, of offices of foremen or other offices or rooms and, in some instances, hung signs upon the doors bearing the legend "Pay A. F. of L. Dues Here." Later the practice of hanging up such signs was discontinued and foremen adopted the practice of telling the employees to go down to some office on the premises and pay their dues. **294** Similar privileges were denied to the United.

I. B. E. W. officers remained in the employ of the respondents, exercising their Plan prerogatives in behalf of the I. B. E. W., for several weeks, and it was only shortly prior to the execution of the contracts between the respondents and the I. B. E. W. locals that they resigned from the respondents' employ to become full time I. B. E. W. officers paid by the I. B. E. W. Carlisle testified that the respondents permitted the Plan officers to retain their offices and to exercise their prerogatives in order to give them an opportunity to wind up their affairs. It appears from the evidence, however, that the

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respondents knew that the Plan officers had shifted over to the I. B. E. W. and had utilized their Plan prerogatives in behalf of the I. B. E. W. Moreover, it is clear that the respondents had intended as much. Carlisle also testified that he had given no orders to the respondents' department heads and foremen to act in behalf of the I. B. E. W. Express orders, however, were unnecessary as the respondents' position had been made abundantly clear, with the result that their supervisors took the steps appropriate for its attainment.

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The evidence reveals the delineations of the respondents' design to dictate to their employees the choice of their bargaining representative. The first step was to favor the I. B. E. W. by according it recognition at a time when its membership was negligible and its organization hardly commenced and when the respondents knew that the United was the only active labor organization among its employees. The next step was to deliver over the Plan organizations to the I. B. E. W. by making the respondents' position in the matter clear to the Plan representatives. Then followed the organizational drive in behalf of the I. B. E. W. by department heads, foremen, and Plan representatives, leading up to the stage of organization contemplated by Carlisle and Tracy as sufficient to justify the execution of contracts.

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**C. Execution of the contracts with the I. B. E. W. locals**

After the I. B. E. W. had established its seven locals and had procured a membership therein, the respondents, in the period between May 28 and June 16, the latter date being subsequent to the commencement of

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the hearing, entered into seven substantially similar contracts with the seven I. B. E. W. locals.<sup>2</sup> The contracts conformed in most respects to the proposed contract which accompanied Tracy's demand for recognition on April 16. The contracts in terms recognized the I. B. E. W. as the representative of its members and were applicable only to such members.<sup>3</sup> The contracts also provided for certain wage increases and a procedure for settling grievances which outlawed strikes and lockouts, and prohibited discrimination by the respondents against any employee because of membership in the I. B. E. W. and coercion by the I. B. E. W. of any

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<sup>2</sup> The contracts were executed on the following dates:

1. June 15, 1937—Contract between Consolidated Edison Company of New York, Inc., and Local No. B830, applicable to gas workers. Respondents' Exhibit No. 17.
2. June 15, 1937—Contract between Consolidated Edison Company of New York, Inc., and Local No. B829, applicable to electric workers. Respondents' Exhibit No. 18.
3. May 28, 1937—Contract between Brooklyn Edison Company, Inc., and Local B-825. Respondents' Exhibit No. 19.
4. June 1, 1937—Contract between New York and Queens Electric Light and Power Company and Local No. B-839. Respondents' Exhibit No. 20.
5. May 28, 1937—Contract between Westchester Lighting Company and The Yonkers Electric Light and Power Company and Local No. B-832. Respondents' Exhibit No. 21.
6. June 16, 1937—Contract between New York Steam Corporation and Local No. B-826. Respondents' Exhibit No. 826.
7. The respondents did not introduce into evidence the contract executed between Consolidated Telegraph and Electrical Subway Company and an I.B.E.W. local, but stated that the contract was substantially similar to the above contracts and executed during the same period.

<sup>3</sup> Recognition of the I.B.E.W. was accorded by the particular respondent granting the contract in the first sentence of Article II of each contract, as follows:

"The \* \* \* Company recognizes the Brotherhood as the collective bargaining agency for those employees who are members of The Brotherhood."

"The statement of the applicability of each contract is contained in Article I thereof, as follows:

"This agreement shall apply to all employees of the \* \* \* Company who are members of the Brotherhood \* \* \*"



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employees into joining the I. B. E. W. or solicitation of membership on the respondents' time and property.

Carlisle testified that he was aware that when recognition was conferred upon the I. B. E. W. on April 20, 1937, it had not as yet completed its organization and that such recognition contemplated the establishment of locals, with committees of which contracts would be subsequently executed. He further stated that at the time of the execution of the contracts he was in possession of no definite information concerning the size of the membership in each local, except newspaper reports. He admitted that the I. B. E. W. did not discuss the matter at that time. It was only on July 29, 1937, after the contracts had been made and the presentation of the Board's case in the hearing herein completed, that the I. B. E. W. submitted a statement<sup>4</sup> of its membership to him. This consisted merely of a typewritten statement showing the number of eligible employees and the number of members in each local. The statement indicated that a majority of the employees eligible for membership in each local were members of the local, except in the case of Local B-829, to which were eligible 13,200 electric employees of Consolidated Edison Company of New York, Inc. This latter exception has particular significance in view of Carlisle's construction of the contracts as exclusive collective bargaining agreements.

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Carlisle testified that the contracts were applicable to all employees and were exclusive collective bargaining agreements, i.e., that the respondents would not enter into collective bargaining agreements with any other labor organizations during the existence of the contracts.

<sup>4</sup> Respondents' Exhibit No. 16.

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He thus in effect admitted that he had recognized and entered into contracts with the I. B. E. W. locals as the exclusive bargaining representatives of the respondents' employees at a time when he did not know the size of their membership and when even as late as June 29, Local B-829 did not have a membership of a majority of the employees within its jurisdiction.

**305** It is clear from the evidence that the contracts were not the result of unhampered bargaining, but were rather the culmination of a plan by the respondents to select the I. B. E. W. as the exclusive representative of the respondents' employees and at the same time deal a blow to the United which they opposed. Carlisle's interpretation of the contracts, despite the express limitation of the representation of the I. B. E. W. to its own membership, discloses the force of the blow dealt the United, namely, the denial of the opportunity to bargain collectively with the respondents during the life of the contracts.

**306** **D. Conclusions as to the respondents' relations with the I. B. E. W.**

We conclude that after April 12, 1937, the respondents deliberately embarked upon an unlawful course of conduct, as described above, which enabled them to impose the I. B. E. W. upon their employees as their bargaining representative and at the same time discourage and weaken the United, which they opposed. From the outset the respondents contemplated the execution of contracts with the I. B. E. W. locals which would consummate and perpetuate their plainly illegal course

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of conduct in interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed to them under Section 7 of the Act. It is clear that the granting of the contracts to the I. B. E. W. by the respondents was a part of the respondents' unlawful course of conduct and as such constituted an interference with the rights of their employees to self-organization. The contracts were executed under such circumstances that they are invalid, notwithstanding that they are in express terms applicable only to members of the I. B. E. W. locals. If the contracts are susceptible of the construction placed upon them by the respondents, namely, that they were exclusive collective bargaining agreements, then, *a fortiori*, they are invalid. 308

In order to establish conditions for the exercise of an unfettered choice of representatives by the respondents' employees, the respondents will be ordered to cease and desist from giving effect to the contracts with the I. B. E. W. locals, from recognizing the I. B. E. W. as the exclusive bargaining representative of their employees, and from their other unlawful conduct; and to post notices that they will so cease and desist, that their employees are free to join any labor organization, and that the respondents will bargain collectively with any labor organization entitled thereto. 309

### **E. Employment of Industrial Spies**

The complaint alleges that the respondents had employed and were employing industrial spies or undercover operatives for the purpose of disclosing to them the activities of their employees in and on behalf of labor

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organizations. The respondents admitted the employment of detectives, but denied that it was for the purpose of investigating the union activities of their employees. The respondents asserted that in any event the employment of detectives did not extend beyond November 1936 and that consequently the controversy on this issue has become moot.

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Uncontroverted evidence discloses that the respondents engaged the detective services of Railway Audit and Inspection Company, herein called the Inspection Company, from October 1933 through October 1936. The manager of the New York office of the Inspection Company testified that the services rendered to the respondents included investigation of the union activities of the respondents' employees. Frequently the respondents would send circulars, leaflets, and other literature to the Inspection Company for investigation by its detectives. Among the various types of literature of this character were included the circulars and leaflets of the Independent Brotherhood, some of which contained the names of

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the leaders of that organization. Detectives of the Inspection Company also covered several of the meetings and conventions of the Independent Brotherhood throughout the year 1935. The Inspection Company made reports of its investigations and delivered them to the respondents.

The manager of the Inspection Company and one of the detectives who did the investigating, testified that detectives trailed Stephen L. Solosy, named in the complaint, and Philemon Ewing, both organizers for the Independent Brotherhood in Manhattan, in April 1935. The detective who trailed Solosy was given a picture of



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him and told to trail him, which he did for two days, after which time he was replaced by another detective whose report was delivered to the respondents. Solosy was unaware that he was being shadowed, but Ewing was exasperated by the ineptitude of the detective who trailed him and finally turned around and entreated him to perform his duties with more adroitness. Both Solosy and Ewing were discharged on January 17, 1936, and as we find below, one of the factors leading to Solosy's discharge was the report of his activities made by the Inspection Company. The respondents apparently still have in their possession the reports of the Investigation Company and so have the power to utilize them as a basis for future discriminatory action against their employees.

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The respondents' contention that the controversy is moot on this issue because the evidence does not show that the respondents employed the Inspection Company for any purposes after November 1, 1936 is without merit. The evidence clearly discloses that the respondents engaged in an unfair labor practice for three years, up to a time not long prior to the filing of the charge herein. A discontinuance at that time of hiring one outside detective agency for that purpose is no assurance that the practice may not have been carried on by other outside agencies or by the respondents' own employees, or that the practice will not be resumed in the future. The respondents have not stipulated that they would not engage in this practice, but on the contrary have from the outset denied the jurisdiction of the Board to take any action in this proceeding.

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### F. The Discriminatory Discharges

#### 1. Wersing, Greulich, and Wagner

- 317 The complaint alleged that on November 29, 1935, the respondents discharged, and thereafter refused to reinstate, Martin A. Wersing, Julius A. Greulich, and Michael A. Wagner, because of union activities. The answer avers that they were discharged for other reasons. Since all three men were employed by New York and Queens Electric Light and Power Company, performed substantially similar work, were the organizers and officers of Local No. 103 of the Independent Brotherhood, were discharged at the same time, and were given the same explanation for their discharge, we will first narrate the employment history of each of them and then discuss their union activity and discharges as a group.

- 318 *Wersing.* Wersing began work for the respondents on October 8, 1929, as a second grade clerk at a weekly salary of \$22.00. All his work was performed during the night. After about six months he was transferred to other night work called "cut in and cut out," which involved making initial and final bills on consumers' accounts. Two months thereafter he received the regular two dollar weekly salary increase which followed upon a satisfactory probationary period. In 1933 he was transferred to day work at the personal request of J. Smith, a supervisor. Wersing found the work dull and about eight months later was transferred back to night work. Early in 1935 he filed an application for a day work position in response to a posted notice that the position was available. The position was obtained by an employee with less seniority than Wersing. A committee of the Inde-

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pendent Brotherhood took the matter up with the respondents and were informed that Wersing had filed his application too late. Subsequently, in May 1935, he was transferred to day work in the stores accounts division of the auditor's department. Although he replaced an employee with a first grade clerk rating, his own rating continued as second grade clerk. He brought this fact to the attention of his supervisor and later of the personnel bureau, from which he received a final, unfavorable communication about two weeks before his discharge.

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While Wersing was not an exceptional employee, he performed his duties competently. When he was employed on night work his supervisor conferred some responsibility upon him and allotted to him the instruction of new employees as an additional duty. His supervisor on the work which he was performing prior to his discharge considered his work satisfactory. At the time of his discharge his weekly salary was \$23.00. A general reduction in pay in 1933, which was not fully restored, accounts for the fact that his salary was less at this time than at an earlier stage of his employment.

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*Greulich.* Greulich began his employment with the respondents on October 3, 1929, as a clerk at a weekly salary of \$25.00. He received the customary two dollar weekly salary increase after six months' employment. In 1933 his pay was reduced  $8\frac{1}{3}$  per cent in conformity with the general pay reduction enforced throughout the respondents' system. In May 1934, one-half of the pay reduction was restored. Thereafter his weekly salary was increased to \$27.00 as a result of a reclassification of his position. He received an additional increase in salary subsequently, so that at the time of his discharge his weekly salary was \$28.75.

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Greulich, like Wersing, worked in the stores accounts division of the auditors' department. Greulich devoted a large portion of his time to writing letters in response to a particular kind of correspondence and was the only one in the division performing that type of work. He also performed the added task of checking the work of twelve girls. He was never disciplined or suspended, but, on the contrary, was commended by his supervisor, at whose request he undertook to write items for the respondents' magazine.

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*Wagner.* Wagner began his employment with the respondents on July 23, 1929, as a first grade clerk at a weekly salary of \$27.00. Six months thereafter he received the regular two dollar increase in salary. In March 1931 he was advanced to the position of accounting assistant in the fixed capital division of the auditors' department at a weekly salary of \$32.00. His work consisted of preparing the monthly authorized fixed capital expenditure reports. He was the only one in the department who performed the work on the figures. In November 1934, he received an increase of \$3.83 in his weekly salary as a result of reclassification of his position. At the time of his discharge his weekly salary was \$34.50.

Wagner's work was frequently commended by his supervisors. The respondents admitted and their records show that Wagner was rated as an exceptionally able and diligent employee.

*Their union activity.* All three men became members of the national organization of the Independent Brotherhood in February 1934. Thereafter they organized Local No. 103 among the employees of New York and Queens



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Electric Light and Power Company. In July 1934 Local No. 103 held its first meeting, at which Wersing was elected acting president and Greulich and Wagner were elected to the Executive Board. Throughout the year 1934 they were actively engaged in securing membership and in distributing circulars, leaflets, and a magazine called "The Tower Man", all issued by the national organization of the Independent Brotherhood. They became members of the Plan in April 1934, but Wersing resigned therefrom in December 1934, and Wagner in the early part of 1935. In September 1934 they formulated a petition of grievances, concerned chiefly with the restoration of the general pay reduction, which was finally presented to the management by a committee appointed by the general council of the Plan, after much persuasion by Wersing, Greulich and Wagner. They asserted that the restoration in 1934 of one-half of the 8½ per cent pay reduction was induced by their activity for wage increases. Thereafter they persistently attacked the Plan as a company-dominated union. In February 1935 Wersing was elected president of Local No. 103, Greulich vice-president, and Wagner treasurer. After their election to these offices they informed their supervisors of that fact by letter and received either written or oral acknowledgment of their letters. Thereafter Local No. 103 issued its own leaflets, circulars, pamphlets, and a monthly magazine called "Live Wire", attacking the Plans, listing grievances against the respondents, and explaining its own aims and policies. A number of articles appearing therein were over the signatures of Wersing and Greulich who wrote most of the Local's literature of this character. They also were actively engaged in soliciting membership by visiting employees at their homes. All this activity

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continued throughout 1935, and if anything, was intensified shortly prior to their discharge.

**329** In March 1935 Wersing and Greulich conferred with Harry Snyder, president of New York and Queens Electric Light and Power Company, with respect to the assignment of an employee with less seniority to a day work position for which Wersing had applied, as related above. In August 1935 Wersing became President of the joint board composed of representatives from all the Independent Brotherhood locals in New York City. In the fall of 1935 there were rumors of impending lay-offs. Local No. 103 and the joint board, under the guidance of Wersing, Greulich, and Wagner, undertook to prevent the impending lay-offs by appealing at rate hearings before the Public Service Commission, by writing to Governor Lehman, Mayor La Guardia, and Chairman Maltbie of the Public Service Commission. They also issued a considerable quantity of literature in opposition to the impending lay-offs.

**330** Just prior to their discharge there appeared in the "Live Wire" a signed article by Wersing entitled "Turkeys or Lay-offs for Thanksgiving". About two weeks prior to their discharge Greulich, who was still a member of the Plan, appeared at a meeting of the Plan members to distribute Independent Brotherhood literature and was promptly ushered out by Plan officials. The next day his supervisor, without especial rancor, informed him that he did not consider his actions on the preceding day as strictly ethical. On November 15, 1935, a committee composed of Wersing, Greulich, and Wagner, had a conference with Harold Dean, vice-president and general manager of New York and Queens Electric Light and Power

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Company, concerning the discharge of James Mannix, an active member of the Independent Brotherhood. They were satisfied with the reasons given for his discharge and did not press the matter further. Dean, however, expressed a strong antipathy to the presumption of the committee in attempting to interfere with the exercise of his discretion to discharge employees.

Thus immediately preceding their discharge their union activity had become intensified, while the chief result of their interview on November 15 with Dean, who was in charge of the execution of the respondents' labor policy at New York and Queens Electric Light and Power Company, was the likelihood that the memory of a disagreeable episode would linger in Dean's mind.

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*Their discharge.* All three men were discharged on November 29, 1935, without notice, but receiving two weeks' pay in lieu of notice. Wersing and Greulich, who both worked in the stores account division of the auditors' department, were notified of their discharge at the same time by their supervisor, who told them to see Mr. Payne in the Personnel Bureau. When they arrived in Payne's outer office the next morning, they saw Wagner leaving Payne's office. Wersing and Greulich had separate interviews with Payne. The accounts of all three men of their interviews with Payne are substantially the same. Payne informed them that they were being laid off because the respondents were discontinuing a department and that it was necessary to absorb a portion of the employees employed in that department into other departments. He stated that married men were being given preference over single men and that since all three of them were single their turn to be laid off had arrived.

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Each of the three men pointed out that other single men and girls with less seniority were retained, and requested an explanation. Payne was unable to explain this fact. The respondents have not requested any of the three men to return to their employment.

**335** The respondents maintain that the three men were laid off for the following reason. The inventory department was engaged in compiling reports required by the Public Service Commission. A substantial number of the employees in that department were transferees from other departments. The department had grown into a body of 300 employees. In 1935 the Public Service Commission's requirements as to reports were so greatly reduced that the respondents found it necessary to discontinue or substantially reduce the department. In transferring employees from the inventory department back to other departments the respondents adopted the standard of favoring married men as against single men, all other things being equal. It was asserted that the discharge of the three men was the consequence of the application of this standard.

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The respondents' contention that the inventory department was being reduced and transfers of employees made to other departments, thereby causing lay-offs of employees in such other departments, is supported by the evidence. In August 1935, 25 employees were laid off as a consequence of the application of this policy, but no employees were laid off in the auditors' department. On November 29, 1935, the three employees were the only employees laid off in their respective divisions. Dean, in his testimony, did not explain why certain single em-



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general statement that the department heads in the exercise of their judgment, determined that a number of single employees with less seniority than these three men were more deserving of retention in their jobs because of special qualifications. Such an explanation, however, is unsatisfactory in the case of Wagner, at least. According to the respondents' own records he was regarded as an exceptionally able and diligent employee. In the application of the respondents' standard of preference to married men, other things being equal, Wagner would certainly not be the first and only man in his division to be laid off. Since he was laid off at the same time as Wersing and Greulich, his fellow officers in the Independent Brotherhood, a finding that he was discharged for union activity would be strong evidence that the other two men were discharged for the same reason.

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It is significant that by the discharge of these three employees the respondents eliminated from their employ all the officers of Local No. 103 at a time when their union activities were beginning to prove troublesome to the respondents. Dean's explanation for their discharge, particularly the discharge of Wagner, is inadequate and not persuasive, in the face of the retention of a number of single men and girls with less seniority in their divisions, and an even larger number in their department. The evidence indicates rather that the respondents unfairly utilized the lay-offs consequent upon the discontinuance of the inventory department as a means of discharging the three officers of the Independent Brotherhood, whom they wished to eliminate from their employ because of their union activity.

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We find that Wersing, Greulich, and Wagner were in

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fact discharged because of their activities in the Independent Brotherhood. The respondents thereby discriminated in regard to hire and tenure of employment in order to discourage membership in a labor organization, and interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

**341** Since his discharge Wersing has devoted all his time to union affairs, and all his earnings from that time until the date of the hearing have been as a union officer. At the time of the hearing he was president of the United Local No. 1212 and chairman of the field representatives of the utilities division of the United. Greulich has been employed since March 1936, by the Federal Writers' Project. Wagner was out of employment until May 13, 1937, when he secured employment with a laundry company at a weekly salary of \$17.00. All three men desire their jobs back. We find that Wersing, Greulich, and Wagner have not, since their discharge, obtained any other regular and substantially equivalent employment.

**342** *2. Kennedy and Emler*

The complaint alleged that on June 19, 1936, the respondents discharged, and thereafter refused to reinstate, William J. Kennedy and John F. Emler, because of union activity. The answer avers that they were discharged for other reasons. Both men were employed as linemen in the overhead bureau of New York and Queens Electric Light and Power Company, were discharged on the same day, and were given identical explanations for their discharge. We will relate the history of the employment and the union activity of each of them separately and then discuss their discharges as a single incident.

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**Kennedy.** Kennedy worked for this company during 1923 and 1924 as a meter-tester. He resigned and subsequently re-entered its employ on January 18, 1928, as a first grade lineman's helper at \$29.90 weekly. In 1929 he became a third class lineman at \$31.90. Thereafter he was advanced to the position of second grade lineman and in 1934 to that of first class lineman, in which position he was employed at the time of his discharge at a weekly salary of \$40.48. His steady advancement is an indication of his competency as a workman. He had also gained experience in underground work and as a "troubleshooter", the latter job ranking just above first class lineman. The respondent's employment records show that during the year prior to his discharge, Kennedy was absent from his work for more than normal periods, but this was caused by illness and time spent in a hospital. He testified that his illness arose out of the character of his work, which often involved working in muddy ditches during inclement weather, and that the respondents' own doctor treated him and advised him to go to a hospital.

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In 1934 Kennedy became a member of the Plan and was elected bureau representative for more than 300 employees in the overhead bureau. Shortly thereafter he became convinced that the Plan was a company-dominated union and was not hesitant about stating his views. In November 1934 he met Wersing, joined the Independent Brotherhood, and thereafter became very active in soliciting members. In February 1935 he was elected general manager of Local No. 103. At several meetings of the Plan in the early part of 1935 he spoke of the futility of the Plan. At approximately this time he sought to resign from his position as overhead bureau representative in the Plan. He communicated his inten-

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tion to his supervisor, who urged him not to resign as it would create an unfavorable impression toward the Plan. Kennedy yielded, but was later informed by the chief officer of the Plan that his supervisor had suggested expelling "that radical", Kennedy, from the Plan. At a meeting of the Plan held thereafter Kennedy taxed his supervisor with having uttered the above statement, which his supervisor parried with a query as to what other course was open to him as a representative of the management. At a special meeting of the Plan held shortly thereafter, one of the respondent's officials made an address containing references to certain radicals and agitators. Kennedy arose and remarked that it was obvious that the references were addressed to him, and that if they denominated his activities agitation, then he was an agitator. The respondent's official then made some remarks about misinterpretation and dropped the matter. At the Plan election in June 1935 Kennedy refused renomination. In August 1935 he was elected president of the national organization of the Independent Brotherhood, resigning from his position as general manager of Local No. 103, which was taken over by Wersing.

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After the discharge of Wersing, Greulich, and Wagner, Kennedy was selected as chairman of a committee to negotiate with the respondent concerning the discharge of the three men. The committee had a conference with the president of the New York and Queens Electric Light and Power Company in December, 1935, at which Mayor La Guardia was present, but nothing was accomplished. The committee reported back to the members of Local No. 103, and were empowered by them to call a strike if necessary. Two representatives from the Labor Department of the



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State of New York strove to obtain a settlement with the respondents, but were unsuccessful. Kennedy decided not to call a strike, as the Christmas season was considered inopportune.

In April 1936 the Independent Brotherhood affiliated with the I. B. E. W. and Kennedy resigned his presidency of the Independent Brotherhood to become a rank and file member of the I. B. E. W. He decided at this time to run again for office in the Plan. On June 11, 1936, he was elected representative for the overhead bureau. He was discharged a week later on June 19, 1936.

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*Emler.* Emler began his employment with the respondent in July 1927 as a clerk at a weekly salary of \$25.00. Shortly thereafter he was transferred to meter-setting at \$27.00 weekly. At approximately six months' intervals he was advanced to lineman's helper in the overhead bureau, to third class lineman, to second grade lineman, and finally to first class lineman, the position he held at the time of his discharge at a weekly salary of \$40.48. There had never been any complaints concerning his work and his steady advancement is testimony of his competency.

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In April 1935 he became a member of the Independent Brotherhood. He devoted his spare time to organizational activity with Wersing and Greulich and talking in behalf of the Independent Brotherhood. In September 1935 he was elected to the executive board of Local No. 103. He was a member of the committee which negotiated for the reinstatement of Wersing, Greulich, and Wagner, and participated in the negotiations. He was also a member of the committee which in December 1935 was

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empowered to call a strike. At that time he was advised by his foremen that it would be foolish to call a strike. He continued his union activities until the time of his discharge on June 19, 1936.

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*Their Discharges.* On June 17, 1937, Kennedy and Emler, who were working on different field jobs, were informed by their foremen that Mr. Payne at the Personnel Bureau wished to see them. They had separate, but substantially similar, interviews with Payne. Payne informed them that he had bad news, that he had orders from the respondents to lay off "surplus employees", and that since they were surplus employees they were being laid off. Both men asked him the manner in which eight years of continuous service had achieved for them the status of surplus employees, but he was unable to explain. He told them that there was a possibility of securing work with Consolidated Edison Company of New York, Inc., and gave them the name of a personnel officer of that company. Both men called there that afternoon, but were unable to see the personnel officer. The next morning

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they succeeded in obtaining an interview, at which they were questioned concerning their ability to perform certain technical electrical work. On learning that they were not qualified for such work, the personnel officer made some remarks about jobs as linemen's helpers at \$30.00 a week, which were followed by the expression of his opinion that these jobs were probably all filled anyway. On June 19 they returned to Payne and were formally laid off, receiving their separation allowances of two weeks' pay for each year of service. Four other men were discharged during the same period, of whom two were union

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men and two were not. One of the nonunion men, Baake, received employment from Consolidated Edison Company of New York, Inc., while the other returned to his former job the next day. Kennedy testified that both he and Emler had seniority over a large number of employees in their bureau, and that they were the only first class linemen who were laid off, while there had been no prior discharges of first class linemen.

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In December 1936 Payne notified Kennedy of an opportunity to secure employment with another public utility company, New York Dock Company. Kennedy notified his union, which in turn notified Emler. Emler called upon Payne who told him to apply for work at the New York Dock Company, adding as a parting thrust that it would be embarrassing for the respondents if Emler resumed his "funny business" at his new job. Emler secured a lineman's job with the New York Dock Company, but at a weekly salary of \$30.00, the salary paid to a lineman's helper by the respondents. He is still so employed at a weekly salary of \$35.00. The respondents have not requested either Kennedy or Emler to return to their employment.

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The respondents contend that the discharges of Kennedy and Emler resulted from the reductions in the overhead bureau necessitated by the gradual change in the character of the work in Queens from overhead to underground. A number of the overhead workers were trained for underground work, while others had to be laid off. In this group were Kennedy and Emler. Dean, who testified to the above, did not adequately explain why Kennedy

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and Emler were laid off, while men with less seniority were retained; nor did he adequately negative Kennedy's statement that after his discharge the men in the overhead bureau were placed on a six day week and that other men were transferred to his department.

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It is most significant that the discharges occurred within a week after Kennedy's election as Plan representative for the overhead bureau. He had proved himself a source of trouble to the respondents when he previously held that position, and it was certain that he would now renew his activity within the Plan in opposition to the respondents' domination of the Plan. His election to that position, in spite of his open affiliation with an outside union, is an indication of the influence he wielded among the employees of the overhead bureau. Discharge would automatically terminate his membership in the Plan, or a transfer to another of the respondents' companies would automatically make him a member of the Plan of such other Company where he would not retain his position as a bureau representative. The evidence points to this as the true explanation for the course adopted by the respondents of giving him a choice between discharge and a transfer to an inferior position in another of the respondents' companies.

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Emler was the last of the group associated with Wersing, Greulich, Wagner and Kennedy in the organization of Local No. 123 of the Independent Brotherhood. His discharge or transfer from Queens, coupled with that of Kennedy, would serve to remove the two principal, active union men who were associated with the three men origi-



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nally discharged. Payne's admonition to him in December 1936 not to resume his "funny business" at the New York Dock Company clearly indicates how long-lived was the recollection of Emler's union activities in the minds of his supervisors.

Although the evidence supports the respondents' contention that the overhead bureau was being gradually reduced because of the change in the character of the work in Queens from overhead to underground, we find that the lay-offs incidental thereto were merely utilized to screen the respondents' true motive. We find that Kennedy and Emler were in fact discharged because of their union activity. The respondents thereby discriminated in regard to hire and tenure of employment in order to discourage membership and activity in a labor organization, and interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

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Kennedy operated a private club after his discharge, but testified that it was a losing venture. Since March 1937 he has been engaged as a paid organizer in the utilities division of the Committee for Industrial Organization. Emler has been working for New York Dock Company since December 1936 at a lower salary than that which he received in the employ of the respondents. Both Kennedy and Emler desire to return to their former positions in the employ of the respondents.

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We find that Kennedy and Emler have not, since their discharges, obtained any other regular and substantially equivalent employment.

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### 3. Solosy

The complaint, as amended, alleges that the respondents discharged Stephen L. Solosy on January 17, 1936, and thereafter refused to reinstate him, because of union activity. The answer avers that he was discharged for other reasons.

365 Solosy commenced work in October 1928 as a tester in the laboratory of Consolidated Gas Company of New York, which is now Consolidated Edison Company of New York, Inc. He left this employment in November 1928, but returned to work in January 1929 and continued in the respondent's employ until his discharge. After having worked in the laboratory for the first four months at a weekly salary of \$20.00, he was transferred to work on instruments known as Thomas calorimeter inspectors, which measured the B. t. u. content of gas. His job was concerned with maintaining, servicing, repairing, and overhauling those instruments. At that time there were twenty-seven such instruments, situated at different places in the respondents' entire system. Solosy's work was thus performed in different places. He received periodic increases and at the time of his discharge was receiving a weekly salary of \$33.54. No complaints or reprimands concerning his work were made. His steady increases in pay attest his competency.

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Early in 1934 he became a member of the Federation of Architects, Chemists, Engineers, and Technicians, an independent union. Shortly thereafter he joined the Plan. The members in his department elected him and Philemon Ewing to head a committee to investigate the

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Plan. He served on this committee for three months, rendering monthly reports to the effect that the Plan was a company-dominated union. In the latter part of 1934 he and Ewing joined the Independent Brotherhood. Both of them did a great deal of organization work in Manhattan for the Independent Brotherhood. His activity became open and known to the respondents at least as early as March 1935. As we have stated previously, during April 1935 he was trailed by detectives, and reports concerning his and Ewing's activities were filed with the respondents. In March 1935 Solosy and Ewing began to publish and distribute a monthly paper called the "Gas Man". Its last issue appeared in November 1936. Both Solosy and Ewing solicited employees at their homes for membership in the Independent Brotherhood, securing at least 25 members in the latter part of 1935. Solosy and Ewing were the only employees in their department who were vigorously engaged in union activity. 368

Solosy and Ewing were discharged at the same time and in the presence of each other. Solosy was told that he was being laid off because the respondents were shutting down the "A" plant of the Astoria Light, Heat, & Power Company, thereby necessitating the laying-off of a number of employees. It appears that the "A" plant was in fact shut down, probably because of the decrease in the amount of gas sold. Solosy was not given previous notice of his discharge, but was given his separation allowance. He pressed his supervisor for further reasons concerning his discharge and received the following cryptic reply, "You know more about it than I do". In 369

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answer to a question whether he would ever be called back, his foreman said that he thought not. The respondents have not requested Solosy to return to their employ.

**371** It appears from the evidence that although there were a few others discharged at the same time with Solosy and Ewing, Solosy was the only one in his division who was discharged. There were only seven employees in his division. Solosy testified that of the other six employees he had seniority over two.

It is significant on the one hand that Solosy and Ewing were the only active union men in their department and that their activities were investigated by detectives and reports of their activities filed with the respondents. On the other hand there is an absence of any adequate explanation for Solosy's discharge while two fellow employees with less seniority were retained. The evidence clearly indicates that the reduction of employees necessitated by the shutting down of the "A" plant was utilized as a screen to conceal the true motive for his discharge.

**372** When we consider all the six discharges involved in this case, it is apparent that the respondents succeeded in eliminating from their employ all the principal organizers and officers of the Independent Brotherhood. Their success was too complete to have been a consequence of the disinterested operation of reductions in personnel.

At the hearing the respondents were not allowed to introduce the testimony of Solosy's supervisors when offered at the continuance on July 6, 1937. The respondents offered no good reason for their failure to produce



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these witnesses at the close of the Board's case on June 24, 1937. They cannot complain of the Board's refusal to admit the testimony when the hearing was resumed two weeks later for the purpose of receiving the testimony of Carlisle and Dean.

We find that Solosy was in fact discharged because of his union activity. The respondents thereby discriminated in regard to hire and tenure of employment in order to discourage membership and activity in a labor organization, and interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

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Solosy has been unemployed since his discharge. He desires to return to his former position in the employ of the respondents. We find that Solosy has not, since his discharge, obtained any other regular and substantially equivalent employment.

#### **IV. EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE**

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Upon the whole record we find that the activities of the respondents set forth in Section III above, occurring in connection with the operations of the respondents described in Section I above, have a close, intimate, and substantial relation to trade, traffic, commerce, transportation, and communication among the several States and with foreign countries, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

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**Conclusions of Law**

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board makes the following conclusions of law:

**377** 1. United Electrical and Radio Workers of America, and its predecessor unions, and International Brotherhood of Electrical Workers are labor organizations within the meaning of Section 2 (5) of the Act.

2. Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler; and Stephen L. Solosy were, at the times of their discharges, and at all times thereafter, employees of the respondents, within the meaning of Section 2 (3) of the Act.

**378** 3. The respondents, by discriminating in regard to the hire and tenure of employment of Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler and Stephen L. Solosy and thereby discouraging membership in United Electrical and Radio Workers of America and its predecessor unions, have engaged in and are engaging in an unfair labor practice, within the meaning of Section 8 (3) of the Act.

4. The respondents, by interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, have engaged and are engaging in unfair labor practices, within the meaning of Section 8 (1) thereof.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

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6. The respondents have not engaged in unfair labor practices within the meaning of Section 8 (2) of the Act.

**Order**

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Consolidated Edison Company of New York, Inc., and its affiliated companies: Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, their officers, agents, successors, and assigns shall:

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1. Cease and desist from:

a. Discouraging membership in United Electrical and Radio Workers of America or any other labor organization of their employees, or encouraging membership in International Brotherhood of Electrical Workers or any other labor organization of their employees, by discharging or refusing to reinstate any of their employees or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment because of membership or activity in connection with any such labor organization?

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b. Urging, persuading, warning, or coercing their employees to join International Brotherhood of Electrical Workers, or any other labor organization of

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their employees, or threatening them with discharge if they fail to join any such labor organization;

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c. Permitting organizers and collectors of dues for International Brotherhood of Electrical Workers or any other labor organization to engage in activities among their employees in behalf of such labor organizations during working hours or on the respondents' property, unless similar privileges are granted to United Electrical and Radio Workers of America and all other labor organizations of their employees;

d. Permitting their employees who were officials of the Employees' Representation Plans to use the respondents' time, property and money in behalf of International Brotherhood of Electrical Workers or any other labor organization of their employees;

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e. Employing detectives to investigate the activities of their employees in behalf of United Electrical and Radio Workers of America or any other labor organization of their employees or employing any other form or manner of espionage for such purposes;

f. Giving effect to their contracts with the International Brotherhood of Electrical Workers;

g. Recognizing the International Brotherhood of Electrical Workers as the exclusive representative of their employees;

h. In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in con-



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certed activities, for the purposes of collective bargaining or other mutual aid or protection.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

a. Offer to Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler and Stephen L. Solosy immediate and full reinstatement to their former positions without prejudice to their seniority and other rights or privileges;

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b. Make whole Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler and Stephen L. Solosy for any loss of pay they have suffered by reason of their discharges, by payment to each of them of a sum equal to that which he would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, less the amount earned by him during such period;

c. Post immediately notice to their employees in conspicuous places through their offices, buildings, plants and other places of employment stating: (1) that the respondents will cease and desist in the manner aforesaid; (2) that the respondents' employees are free to join or assist any labor organization for the purposes of collective bargaining with the respondents; (3) that the respondents will bargain collectively with any labor organization entitled thereto; (4) that the respondents will not discharge, or in any manner discriminate against members of United Electrical and Radio Workers of America or any other

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labor organization of their employees or any person assisting such organizations by reason of such membership or assistance; (5) that the respondents will not discharge, or in any manner discriminate against any employee for refusal or failure to join or assist International Brotherhood of Electrical Workers or any other labor organization of their employees; (6) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

d. Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondents have taken to comply herewith.

3. The complaint, in so far as it alleges that the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (2) of the Act, is hereby dismissed without prejudice.

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Signed at Washington, D. C., this 10th day of November, 1937.

J. WARREN MADDEN

*Chairman*

EDWIN S. SMITH,

*Member*

DONALD WAKEFIELD SMITH

*Member*

NATIONAL LABOR RELATIONS BOARD

(SEAL)

**Proof of Service of Board's Order of November 10, 1937**

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IN THE MATTER  
of  
CONSOLIDATED EDISON COMPANY OF NEW  
YORK, INC., and its affiliated Companies  
and  
UNITED ELECTRICAL AND RADIO WORKERS  
OF AMERICA, affiliated with the Commit-  
tee for Industrial Organization.

Case No.  
C-245

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**AFFIDAVIT AS TO SERVICE**

DISTRICT OF COLUMBIA, SS.:

I, **BERTRAM KATZ**, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 10th day of November, 1937, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision and Order to the following named persons, addressed to them at the following addresses:

Messrs. Louis B. Boudin & Sidney Elliott Cohn  
8 West 40th St.  
New York, New York

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Whitman, Ransom, Coulson & Goetz,  
40 Wall St.  
New York, N. Y.

International Brotherhood of Electrical Workers  
103 East 25th Street  
New York, New York

**BERTRAM KATZ.**

Subscribed and sworn to before me }  
this 10th day of November, 1937. }

**HAROLD G. WILSON,**  
Notary Public, District of Columbia.

(Seal)

My Commission expires May 15, 1941.

**394** *Proof of Service of Board's Order of November 10, 1937.*

[Copies of receipts for registered mail delivery to Messrs. Whitman, Ransom, Coulson & Goetz, and Messrs. Louis B. Boudin and Sidney Elliott Cohn are omitted.]

The "Return Receipt"; for registered mail delivery as to the International Brotherhood of Electrical Workers is as follows:

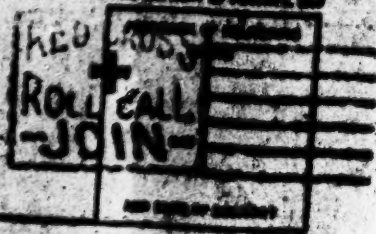
**395****396**



Post Office Department  
OFFICIAL BUSINESS

REGISTERED ARTICLE

No. 12  
INSURED PARCEL



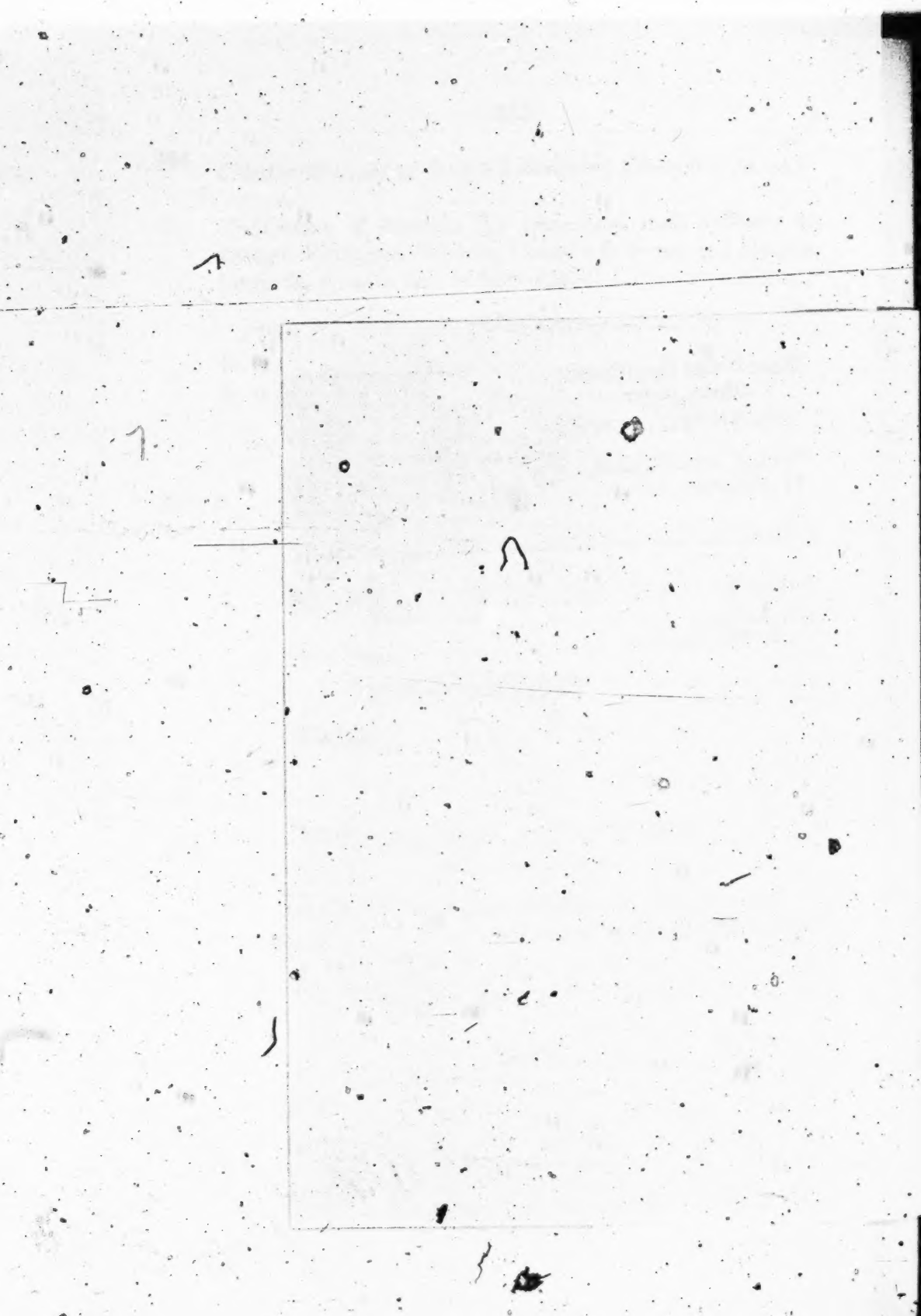
No. \_\_\_\_\_

Return to National Labor Relations Board  
Street and Number,  
or Post Office Box

Wash. ~~NEW YORK~~  
D. C. ~~NEW YORK~~

RETURN RECEIPT

*[Illegible signature and text in the return receipt section]*



**Minutes of Hearing Held June 3, 1937, before the  
Trial Examiner**

**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
SECOND REGION**

**IN THE MATTER**

**of**

**CONSOLIDATED EDISON COMPANY OF NEW  
YORK, INC., and its affiliated Companies,  
BROOKLYN EDISON COMPANY, INC.,  
NEW YORK & QUEENS ELECTRIC LIGHT  
& POWER COMPANY,  
WESTCHESTER LIGHTING COMPANY,  
THE YONKERS ELECTRIC LIGHT AND  
POWER COMPANY,  
NEW YORK STEAM CORPORATION,  
CONSOLIDATED TELEGRAPH & ELEC-  
TRICAL SUBWAY COMPANY,**

*Respondents,*

**and**

**UNITED ELECTRICAL AND RADIO WORKERS  
OF AMERICA, Affiliated with the COMMIT-  
TEE FOR INDUSTRIAL ORGANIZATION.**

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Case No.  
II-C 224

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**14 Vesey Street,  
New York City, N. Y.,  
June 3, 1937, 10:00 A. M.**

The above-entitled matter came on for hearing pur-  
suant to notice.

**Before:**

**ROBERT M. GATES, Trial Examiner.**

**Appearances:**

**DAVID A. MOSCOVITZ, Esq., Attorney for the National  
Labor Relations Board.**

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**WILL MASLOW, Esq., Attorney for the National Labor**

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# *Proceedings*

## Relations Board.

LOUIS B. BOUDIN and SIDNEY ELLIOTT COHN, 8 West 40th Street, New York, N. Y., appearing for United Electrical and Radio Workers Local 1212.

MESSRS. WHITMAN, RANSOM, COULSON & GOETZ, 40 Wall Street, New York City, N. Y. (By William L. Ransom and PinCUS M. Berkson), appearing for the Respondent Companies.

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## PROCEEDINGS

Trial Examiner Gates: Are you ready, Mr. Moscovitz?

Mr. Moscovitz: I would like first, Mr. Examiner, to have noted an appearance in association with me in the trial of this proceeding, the name of Mr. Will Maslow, attorney for the Second Region of the National Labor Relations Board. I don't know whether the other appearances have been already noted, but Mr. Louis Boudin and Mr. Sidney Elliott Cohn are here, representing the United Electrical and Radio Workers of America, the organization which filed the charge in this proceeding.

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At this time, I offer as the first exhibit in this proceeding a certification under the signature of Mrs. Elinore M. Herrick, Director of the Board in this Region. The certification contains the pleadings in the case. You will notice that there is also attached to the certification a notice of motion to intervene filed by Mr. Emanuel Redfield, who is an attorney representing an independent group of employees presently employed by the Con-

**NOTE:** In printing the transcript of the hearings before the Trial Examiner of the Board, the numbering of the pages of the typewritten Stenographic Minutes of the hearings is also shown (e.g., S. M. —), as well as the numbers of the printed pages. Where references are contained, in the testimony or in other documents, to pages of the Stenographic Minutes, these can be located by use of the page numbers shown for the S. M. paging.



solidated Edison System. At the same time I offer with the certification, and make part thereof, a notice of motion to intervene, filed by Mr. Arthur A. Fink, who is counsel for the Independent Gas & Electrical Workers Union of Westchester County.

We received service of this notice of motion yesterday afternoon. I think it, too, should be admitted at this time.

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Is there any objection?

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Judge Ransom: If the Board please, in behalf of the respondent companies, we make here only a special appearance. We are here subject to reserving our rights and only for the purposes which are stated in our notice of motion, which is a part of the certified transcript which Mr. Moscovitz has just offered in this record. Whatever participation takes place in these hearings in behalf of the respondent companies, is subject to that special appearance and the reservations stated in our notice of motion. I take it that this complete certification of papers for the record is offered as Exhibit No. 1.

Mr. Moscovitz: Yes.

Judge Ransom: Subject to our special appearance and reservation of rights, we have no objection to the certification.

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Trial Examiner Gates: The offer is admitted.

(Document referred to received in evidence and marked Board's Exhibit No. 1.)

Mr. Moscovitz: Before proceeding with the introduction of a stipulation, Mr. Examiner, I would ask if there is to be any argument in support of the two petitions to intervene in this proceeding?

Trial Examiner Gates: We will have a statement from the petitioners.

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Mr. Redfield: May I be heard now?

Trial Examiner Gates: Yes.

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Mr. Redfield: I represent an organization of employees of the Consolidated Edison Company consisting, as I am advised, of about 8,000 alleged members. On or about May 10th—I should say this, that they are employees of the Consolidated System within Greater New York—on or about May 10th we filed informal charges with the Board complaining of the unfair practices of the company. About two or three days thereafter the formal complaint issued against the company on the charge of the complainant in this proceeding. Now, for all purposes we might just as well have been the formal complainants in this action, and since we represent an interest of employees and have supported our charges by about ten affidavits of employees who are coming here to assist in this proceeding and, furthermore, we are ready and able to produce at least twenty more people in support of these charges and have been most militant in prosecuting these issues, and since our interest consists of about 8,000 members who have a potentiality of about 30,000 members, if the unfair practices of the company are abated, I feel we are entitled to a position as intervenor in this proceeding.

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Trial Examiner Gates: Have you filed a charge with the—

Mr. Redfield: Board?

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Trial Examiner Gates: Mrs. Herrick?

Mr. Redfield: Yes, sir, we filed informal charges on May 10th and we were asked the very next day by Mr. Will Maslow to provide supporting affidavits and we furnished them and I think we furnished more affidavits

than anybody in this proceeding and we have twenty more which we are offering to the Board, and since our membership is dependent upon the ceasing of these unfair practices, I believe we have a sufficient standing here to warrant us to intervene.

Judge Ransom: If the Examiner please, on behalf of the Companies, may I say this: It may not have yet come to your Honor's attention, but the respondents have pending before the Board, and I take it also pending here, a motion to dismiss the proceeding for want of jurisdiction over the respondents and the matters complained of. With respect to this application for intervention and any others that may be made, our desire is chiefly to preserve our rights and contention as to jurisdiction. Reserving those rights, we think, it is for the Board to say whether it wishes to admit this case at this stage as an intervenor one, an organization, who was not a party to the matters complained of in this cause and who so far as we know wasn't in existence at the time the matters principally complained of took place. Our desire is to stand upon our objection to the jurisdiction, both as to the hearing and determination of the original

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complaint and also the jurisdiction and power of the Board to admit at this stage an intervenor when the question of jurisdiction has not been determined.

Mr. Redfield: May I just make one addition, if you don't mind: I would like to add to my remarks that we filed our motion for intervention on or about May 21st.

Mr. Moscovitz: Would you want to hear us on the motion at this time, or would you rather hear both motions?

Trial Examiner Gates: I would rather hear both motions.

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Mr. Arthur A. Fink: I represent a Westchester unit known as the Independent Gas & Electric Workers Union of Westchester County. Now, this union is concerned purely with employees employed by the Yonkers Electric Light & Power Company and the Westchester Lighting Company. There are at the present time employed by both these companies approximately 2700 employees who would be considered employees entitled to be a part of a union according to the National Labor Relations Act. Of these 2700 we have at this time enrolled with us approximately 1100. Now, this organization filed charges here about a month ago, by various of its members. Affidavits have been taken, statements are on file with the National Labor Relations Board, we are ready to substantiate every statement and, in fact, we have about a dozen additional statements ready to submit to the Board. Now, we are the only union in Westchester

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County at present active in so far as the Westchester Utility Employees are concerned. When I say "Utility" I mean those confined to the gas and electric business. The various other unions, I will say at this time, have made very little headway in Westchester County. We are the only militant union in that group and we have no representation here by counsel or any other organization to take care of the rights of Westchester County employees, and that is the reason why we have filed our charges and we are intervening at this time.

Judge Ransom: May I say this as to this application on behalf of an organization of employees of those of the respondents who are in Westchester County?

Counsel for the respondent has had no notice or information of this application to intervene until it was made in the proceedings. Our position about this appli-



cation is substantially what I stated here, as to the application of the organization represented by Mr. Redfield. We have no desire to contest the hearing of any representatives of any of our employees in a tribunal having jurisdiction. We reserve our rights as to jurisdiction rather than oppose the merits, if any, of the application for intervention.

Mr. Moscovitz: The Board opposes the petition for intervention by both Mr. Redfield and Mr. Fink. I do not think that the issue in this proceeding should be confused by the statements which have been made in 416

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support of the petitions for intervention. The only parties to this proceeding, as I see it, are the government and the Consolidated System. I think that it would be a mistake for the Board to establish precedent that in any proceeding where the public interest is being litigated, any group or any attorney should be permitted to come in as representing individual employees or groups of employees who find themselves within the same protective hand as that of those who filed the original charge. There is nothing inconsistent in that statement because the Board, as proceeding here, gives the same protection to the employees represented by Mr. Redfield and Mr. Fink as they do to the employees represented by the labor organization that filed the charge here. 417

I might also point out that the charge referred to by Mr. Redfield was of no legal effect, as I understand it, since not sworn to.

I might also point out that Mr. Fink filed no charges in this proceeding. In all fairness, I should say that both Mr. Fink and Mr. Redfield have been very cooperative with the Board in presentation of certain aspects of the merits of this case. I appreciate that cooperation,

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and hope that it will continue, but I must point out once again that those employees which Mr. Redfield and Mr. Fink represent, who will be called to testify in this proceeding, will be called to testify by the government

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just as other employees will be called to testify by the government, and it is unnecessary for an intervention for protection of their rights. If the proceeding was one where a labor organization involved was going to have its rights limited, or jeopardized by the affirmative action of the Board, then I would say that they would be right in most vigorously requesting intervention, so that the interests which might be possibly jeopardized or limited, could be adequately protected. That is not so in this proceeding.

May I also point out that there is no question of representation in this case.

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Mr. Fink: May I say a word in reply, Mr. Examiner? If the argument is that because the Government's position is consistent with ours, is a valid argument, then I would say that in all cases of intervention, whether in administrative matters or courts of law, there would be no use for intervention in such cases because in most cases where intervention is sought, the attitude of the intervenor is consistent with that of the, shall I say, claimant or complainant. Now, in our case, we could just as well have been the formal complainants as the United Electrical Workers. Why the Board did not act upon our charges in formulating its complaint is not to my knowledge. I don't think they tried to show partiality, but still our interest here is just as strong as that

S. M. 11

of the United Electrical Workers, and they appear here by counsel, too.

Mr. Moscovitz: That is not—

Mr. Fink: And the United Electrical Workers appearing by counsel here have an interest as consistent with the Government as ours is, therefore, I think we should have a right to be represented by counsel as well as any other union. Certainly, when we have eight thousand pledged members, we have a strong interest.

Mr. Boudin: On behalf of the complainant, the United Electrical and Radio Workers' Union, we beg to say that we oppose both applications for intervention, as we believe it might lead to confusion and complicate the issues involved. I do not care to enter into a discussion as to whether these organizations are as strong as their counsel have represented them to be. What is undoubtedly the fact is that either they have not chosen to file charges in time or have not pushed them vigorously enough so that they have not come up for this hearing, either with ours or ahead of ours. Interventions are usually granted in cases where some special interest is involved, that is not the same as complainants, or where there is danger—

Trial Examiner Gates: I do not believe it is necessary to have any more argument on this point. I will reserve decision on it. I do not believe it is vital at this time.

Judge Ransom: For the record, I would like to make

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formally here the motion of which a notice of motion has been served and is part of the transcript, namely, that the above named respondents, appearing specially and only for the purposes of the motions hereinafter set forth, hereby jointly and severally move that the Board dismiss the complaint and charge herein, and terminate the proceeding, upon the grounds that the National

Labor Relations Board has no jurisdiction, power or authority over the respondents or over the subject matter of the complaint and charge, and has no jurisdiction, power or authority over the respondents or over the subject matter of the complaint and charge and has no jurisdiction, power or authority to hear and determine the same, and that the labor practices of the respondents, alleged in the complaint, are not shown to affect "commerce" as defined in the National Labor Relations Act; and upon the further ground that such matters and things as are complained of are under the jurisdiction of the State of New York, and not of the Federal Government, and that the legislature of the State of New York has, upon the recommendation of the Governor, passed an act entitled, "An Act to Amend the Labor Law, in relation to Establishing a Labor Relations Board to promote equality of bargaining power between employer and employee and to diminish the causes of industrial disputes by encouraging collective bargaining, and making an appropriation to the Department of

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Labor," by which act any such complaint and charge as to any of the respondents would be exclusively under the jurisdiction of the New York State Labor Relations Board created thereunder.

I may say, in relation to the motion, which I do not propose to argue at this time, of course, that since the notice of motion was served, the measure passed by the legislature has since been approved by the Governor of the State of New York, and is now Chapter 443 of the New York State Laws of 1937.

May I also say this, subject to our reservation of rights: I do not express great confidence in my familiarity with your procedure. In our notice of motion, pur-



suant to appropriate sections of the rules and regulations of the National Labor Relations Board, we asked that the Board order that the complaint and charge herein and all the proceedings instituted in respect thereto, including the motion to dismiss, for want of jurisdiction, be transferred and continued before the Board in Washington, D. C., for the reasons this case involves a highly important issue as to the applicability of the National Labor Relations Act to the operations of the respondents in local and intrastate production, transmission, distribution, sale or delivery of electricity, gas or steam, or in furnishing locally of intrastate facilities for the transmission and distribution of electricity, and as to the proper scope of the Federal power to regulate such

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S. M. 14

operations, and that the importance of the issue, not only to the interested parties, but to the public, warrants and requires that the hearing and decision of this motion and any further proceedings herein be directly by the Board.

According to telegraphic advice received last night, the Board has denied that motion for the present transfer of this question of jurisdiction to itself and has ruled and directed that the proceeding go forward and has held the question of the motion to dismiss for want of jurisdiction until there has been, as I understand it, a full hearing upon the complaint.

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For the purposes of the record, I desire to have it show my objection and exception to that determination by the Board. The Board stated that the formal order of the Board would follow. That order has not as yet been received. I would like to reserve the right, if and when that order is received, it is necessary to make any further reservations, motions, or objections, I may do so.

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I presume that the future procedure as to this notice to dismiss is determined and controlled as far as your Honor is concerned by the action of the Board, which we have excepted to.

Trial Examiner Gates: That is correct. The motion made is dismissed and denied.

S. M. 15.

Mr. Ransom: Well, the Board ruled that it was held in abeyance until there was a full hearing.

331 Trial Examiner Gates: Until there is a copy of that here—do you have a copy of the telegram?

Mr. Moscovitz: No, I have not.

Mr. Ransom: Unfortunately, I left my copy in the office, I can telephone for it.

Trial Examiner Gates: Well, it is not necessary to have it at this time.

Mr. Moscovitz: The only point that I raise is this: Does the telegram deny the motion to transfer the proceeding to the Board or does it also state that we must proceed completely in this case on jurisdiction as well as merits?

332 Mr. Ransom: It did not say anything about hearing completely but it said until a full hearing was had. As I recall the expression in the telegram, it said the motion is held in abeyance until a full hearing is had, and that the formal order follows.

Mr. Moscovitz: I offer at this time, Mr. Examiner, a stipulation entered into between Judge Ransom and myself which contains facts for the determination of the question of jurisdiction by the Board.

Mr. Ransom: You offer the complete stipulation?

Mr. Moscovitz: I offer the complete stipulation.

Trial Examiner Gates: It will be admitted.

S. M. 16

Mr. Ransom: Well, if your Honor please, just a moment. This stipulation, as your Honor will note, stipulates certain facts as a method of proof; namely, this is just as though witnesses testified to this matter, as wholly without prejudice to the right of any party hereto to object to the materiality and relevancy of any such facts and also without prejudice to our special and limited appearance.

There are certain paragraphs of the matter stipulated to which, for the purposes of the record, I wish to object to their materiality and competency.

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Paragraph 67, which starts on page 56, I wish to object to certain data therein set forth as to the contents of paragraph 67. There is set out in that paragraph under various sub-divisions stipulated facts as to service contracts between the respondent companies and Federal, State and Municipal governments. We object to the admission of those facts in evidence on the ground that they are immaterial and irrelevant to any issues herein; that the statute here, the National Labor Relations Act, is related to unfair labor practices which obstruct or affect commerce as defined in the Act and is not related to acts affecting the activities of government, as such.

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Likewise, we object to the materiality and relevancy of those other parts of paragraph 67 which state facts as to contracts with particular consumers who are singled

S. M. 17

out as themselves, to some extent, engaged in interstate as well as local commerce and communication.

We make objection to the admission of those stipulated facts on the ground that such matters are too remote and are wholly indirect and are outside the Act

*Proceedings*

and that the respondents aren't and cannot be brought within the Federal Act because some of their consumers are engaged in interstate commerce although the respondents are not.

We raise no question as to the competency of this method of proof in behalf of the Board, but we object to the materiality and relevancy of the matters contained in paragraph 67.

Mr. Moscovitz: Mr. Examiner, since the stipulation contains about 69 pages of printed facts and statistics and it is quite obvious that you will not be in a position to read so large a document at this time, I would consider it valuable for our purposes here at this time to note exactly what, in summary, the stipulation is, if I may be so permitted.

In the first place, you will find a detailed description of the territory in the organization of the respondents.

Secondly, you will find the number of persons employed by the respondents totalling some 42,101, with a break down into proper working classifications; as well as the 1936 payroll of the respondents, which shows a total of some \$81,891,000. Then there is a statement of the respondent's scope of business and operations showing that the Consolidated Edison of New York supplied

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in 1936 about 55.3 percent of the total gas supplied to the public of New York City and that the groups supplied in 1936 97.5 percent of the total electrical energy sold by the central station companies in New York City, and that the New York Steam Corporation is the only central gas station system utility operating in New York City, deriving its entire revenues from the sale of steam in the amount of some ten million dollars.

For 1936 there is a description and story of manage-



ment as well as a description of the manner in which it carries on its operations. This shows that the respondents constitute and are operated as a unitary and integrated system for the supplying of gas and electricity and steam service to consumers within parts of New York City and the County of Westchester. The major labor policies of the respondent companies are determined by the trustees of the group for the group and though locally administered by the executive officers of each company it is done in a manner not inconsistent with the general policies as determined by and for the group. 440

Then there is a statement analysis and description showing that coal, oil and gas oil are purchased by respondents for the manufacture of electricity, gas and steam and that these essential raw materials are purchased by respondents from points without the state of New York and delivered to the plants of the respondents

S. M. 19

within the State of New York by rail, barge, and steamship; further, that copper is purchased in substantial quantity from points outside the State of New York as well as cable and delivered to respondents within the State of New York. 441

It should be pointed out, too, here, that there is incidental to the manufacture of gas a recovery of coke, tar, light oils, and sulphate of ammonia as by-products. The proceeds of their sale are treated as an abatement of production expenses.

These by-products are sold to the purchasers in New York City and the products manufactured by the purchasers from such by-products are sold by them in trade and commerce. There is a submission of data as to particular consumers showing that the Consolidated Edison

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group of companies serve about 2,324,800 consumers with electric service and about 1,154,000 with gas. The consumers listed in the stipulations as using the gas and electricity are not to be considered as limiting the list which could be incorporated. It is simply tabled to give an idea of the kind of consumers involved and a picture of the indispensable connection. It is interesting also to note that electric service is supplied to the Federal government as in the case of where it is supplied to the general post office, United States Barge Office and the Interstate Commerce Commission, as well as to the other Federal

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and State government agencies; that it is supplied to the Western Union Telegraph Company and the Postal Telegraph Company, which use such power for the operation of transmitting and receiving equipment for telegraph messages, both local and interstate; that it is supplied to the Radio Corporation of America for the operation of switchboards for trans-Atlantic radio service; to the New York Telephone Company for handling local and long distance communications as well as to the Dow-Jones ticker service, and the service of the New York Stock Exchange; further, that there is similar service for the Floyd Bennett air field; the New York Times; certain companies operating electric ferries on the Hudson River as well as the railroad companies, including the New York Central, the New York, New Haven and Hartford, the Hudson and Manhattan and many others of the like.

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The current supplied to the Hudson & Manhattan is used to operate the tubes from New York to Jersey City. That gives quickly and in short summary a picture as we see it of the important facts and high points included within the stipulation which has been introduced.

Judge Ransom: In behalf of the respondents, we of course do not acquiesce in the necessarily incomplete but doubtless intended to be fair and indicative statement of Mr. Moscovitz, which he has made as to the stipulation in the respects, which appeal particularly to him from the

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viewpoint of the Government's case. At the appropriate time, under the action of the Board yesterday, I wish to call to Your Honor's attention, or to the attention of the Board, many of the things which are in the stipulated facts. 446

The one matter which Mr. Moscovitz did not refer to, but I may be pardoned for referring to, is that of the last paragraph of the stipulation which relates to the New York State Labor Relations Act creating a New York State Labor Relations Board. The provisions of the Act in general resemble those of the Federal Act but in various respects go much further, and so for your Honor's convenience, without there being any need for it being made formally a part of the record, I will supply you with a copy of the official print of the measure which is now Chapter 443 of the Laws of 1937. For Your Honor's information in that respect, I think I should state for completeness that by its terms this Act becomes effective on and after July 1, 1937, and under the terms of the Act as drawn, the Board cannot be finally and officially created, at least until the 1st of July and could not exercise any powers or jurisdiction before that date, if it were informally brought into being before that date. 447

My purpose in the two objections, which I made with respect to paragraph 67 of the stipulation was only to reserve completely our rights as to the bearings, if any, of the facts which we have been glad to stipulate with Mr.

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Moscovitz to be facts, although we do not admit their bearing or affect upon this controversy.

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Mr. Moscovitz: I think it should be noted, Mr. Examiner, by yourself, that the Act which becomes effective July 1, 1937, is not in its nature retroactive and of course it does raise a very serious jurisdictional question, we all admit that, but you cannot decide it and Judge Ransom and myself cannot decide it. All we can do is put in all the facts as we see them as adequately as we can and then have the jurisdictional question decided by the Board.

I have nothing further to say.

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Mr. Boudin: I would like to say in view of the statements made by Mr. Moscovitz that we all admit that the new Act may raise a serious question of jurisdiction and I, for one, don't quite agree to that broad statement. It seems to me that even if the Act were effective today, I doubt whether it would of necessity raise the question of jurisdiction in advance of the facts appearing here. Of course, after the facts appear in this case, it will be a question of jurisdiction but not necessarily because of the existence of the State Act but because of the nature of the Federal Act. The mere existence of the State Act does not raise that question since it has been repeatedly decided that the State and the Federal Government have, in certain instances, concurrent jurisdiction and

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that the existence of a State agency for regulating certain things did not necessarily mean that a Federal agency may not act in the same manner. I take it I needn't expatiate on that much longer.

Trial Examiner Gates: The stipulation is admitted.



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(Document referred to marked Board's Exhibit No. 2, was received in evidence.)

**Judge Ransom:** I respectively except on behalf of the respondents.

**Mr. Moscovitz:** I have a final offer to make, Mr. Examiner. I have here a publication issued by the Consolidated System in August of 1936 entitled "Serving New York, Electricity, Gas, Steam", which gives a graphic, dramatic picture of the operations of the companies involved in this proceeding, or that is, the respondents involved in this proceeding.

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I offer it at this time. I may say that it is not offered to in any manner vary or impeach the facts contained in our stipulation.

**Mr. Ransom:** If Your Honor, please, in behalf of the respondents, we most earnestly object to the admission of this pamphlet in evidence. We think it is incompetent and its receipt would be highly improper as to the method of proving facts in a quasi judicial proceeding, no foundation has been laid for its receipt in evidence for any purpose. Here is a somewhat colloquial and graphic description of various operations of the respon-

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dents. I may say, I think Mr. Moscovitz will not contest the statement, that this was thrown together last summer for a purpose of giving some visitors to this country from abroad, who came here upon invitation of the Federal government and private industry, a graphic sketch and account and delineation of some phases of the companies' operation. It wasn't prepared for any judicial purpose. It isn't in nature, style or contents or phraseology suitable for such a purpose. It is stated in behalf of the government, truly, that there is nothing in this

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which impeaches or varies anything which has been so comprehensively stipulated. I submit that in view of that statement that this comprehensive stipulation of 67 pages, which has been so cooperatively developed between the Government and the companies, would not be usefully or properly supplemented by this book of photographs and what we may call colloquial text. In any event I object to it earnestly as wholly incompetent, no foundation whatever laid for the receipt of this document in a quasi judicial proceeding. We think it would be highly improper to admit it as well as serving no useful purpose.

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Trail Examiner Gates: It will be admitted.

Judge Ransom: Exception.

(Document referred to marked Board's Exhibit No. 3, was received in evidence.)

Mr. Moscovitz: Mr. Examiner, before concluding our

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offer on jurisdiction, I would ask Judge Ransom if he would admit that this document, "Serving New York", to which he objected, was gotten up and published by the Consolidated Edison Company of New York and its affiliated companies, the same companies who are in this proceeding as respondents.

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Judge Ransom: Your Honor, I think I have stated that. I think Mr. Moscovitz, if he wishes, may accept my statement, that this pamphlet was put together for the purpose which I have stated. It was done by the Consolidated Edison Company for the purposes of giving a graphic story to some foreign guests who were in this country upon the invitation of the Government of the United States and of private industry, and who, under the hospitality arranged, were being locally shown the public utility facilities of this city. It was regarded,

and undoubtedly was, a suitable pamphlet for them. They were men, most of them, who were experienced in utility operation by Government and private industry in other lands. There was no thought of making it in a form or content or phrasing suitable for a method of proof in a legal proceeding.

Mr. Moscovitz: That is all we have to offer, Mr. Examiner.

Judge Ransom: The proof which has been offered embodies the case in behalf of the government on this one phase of the matter of jurisdiction.

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I wish to offer in evidence the judgment roll filed June 2nd, 1937, in a case entitled "Consolidated Edison Company of New York, Inc. et al, against Lamar Hardy, United States Attorneys and others", which was case equity number 81-377, in the United States District Court for the Southern District of New York. The copy of the judgment roll which I have here is a copy certified by Charles Wiser, Clerk of the United States District Court for the Southern District of New York.

Mr. Moscovitz: I object to this offer, Mr. Examiner, on the ground that the Securities and Exchange Commission was not a party to the proceeding, that the jurisdictional question involved in that case, that of interstate commerce, is not the same as the one that we have before us today, there being a different question of what is commerce under that statute from what is commerce under this statute. I also would point out that although an action was brought some two years ago, there was no judgment roll entrance until yesterday.

Judge Ransom: No, the judgment roll was certified, I think, yesterday, but the final decree, at least, was made by Mr. Justice Caffey, on the 23rd day of October, 1935.

I may say as to—

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**Trial Examiner Gates:** Is that in support of paragraph 11 of the affidavit?

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**Judge Ransom:** That is in support of paragraph 11 of the affidavit. I may say that this action was one brought to determine the applicability as to the Consolidated Edison Company, the Brooklyn Edison Company, and the Westchester Lighting Company, and I think perhaps one or two others of the former companies which have since emerged,—the applicability to those companies of the Public Utility Holding Act of 1935, and if the Act in its terms was held to be applicable, whether the Act as so constituted was valid and constitutional.

The Securities and Exchange Commission was made a party, its regional administrator in this region, was made a party. The regional administrator was served within the Southern District of New York. A United States Marshal served with process the Securities and Exchange Commission in Washington, although the latter service by no possibility could have legal sufficiency. The Securities and Exchange Commission, by Mr. Cohen, Mr. Offen and Judge Burns, appeared in the case specially and moved to dismiss as to the Securities and Exchange Commission on the ground that there was not legal service upon it. The respondents took essentially the position that they had named the Securities and Exchange Commission as parties defendant because they desired, irrespective of technicalities of service, to give the Commission an opportunity to take part in the litigation.

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The motion to quash was granted as to those defendants and the action was continued and went to final decree as regards the District Attorneys who, under the



Statutes are charged with the duties of enforcing the Act, and also against the postmasters in New York, Brooklyn and the Bronx, who, under the Statutes, are charged with certain duties as to exclusion from the mails. The government continued the case but the Commission was taken out of it by its own motion. Of course, I take it that in this present case there are two different questions urged in behalf of the government. One would be a question whether the respondents are engaged in interstate commerce as the complaint here alleges. The other would be a question of whether even though the respondents were not engaged in interstate commerce, the fact that some or many of their consumers were engaged in interstate commerce, would have repercussions and effects which would bring within the purview of the Act an employer who was not himself engaged in interstate commerce.

Clearly upon the question of whether the respondents are engaged in interstate commerce, this judgment roll is on its face applicable; as to its further implications,—those may be a matter for argument.

Mr. Moscovitz: On that point, Mr. Examiner, I again enter my objection. You have here a decree *pro confesso*. You have here a situation where there was no legal

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service. You have here a situation where, as I understand it, you will find no determination. You have also a situation where there is to be an interpretation of what is interstate commerce under one Statute, which will be argued as a matter of determination as to application as to what is interstate commerce under our statute, and by virtue of the very nature of the Statute, the definitions of interstate commerce thereunder, the decisions of the Court in the Jones and Laughlin Case as applied

## Proceedings

to labor disputes arising under this Act. It seems to us that the offer should not be admitted.

Judge Ransom: I am sure that Mr. Moscovitz did not mean to leave the impression that legal service was not made upon proper defendants in this case. In the Consolidated Edison Case against Hardy et al, legal service was incontestibly made upon the local enforcement officers in the Eastern and Southern Districts of New York and upon the United States Marshal who had certain duties under the Act and upon the post-masters in three post offices, who were charged with certain duties under the Act. The case proceeded and various motions were made by the government in behalf of those defendants after the Commission itself had been eliminated from the case upon its own motion.

I submit that the matters to which Mr. Moscovitz refers are for argument and do not go to the question of admissibility. As I say, the government practically

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stipulated to a decree *pro confesso*. A decree *pro confesso*, or a consent to a decree *pro confesso*, has the effect, of course, of taking the facts only well pleaded and not the legal conclusions. The decree of Mr. Justice Caffey enjoined those who were charged by law with instituting prosecutions, for pressing them against the respondents, because the Statute was not itself applicable to them, even though, as is true here, of the case at bar, the language was not broad enough to draw distinctions between companies which are local and not interstate and those which are engaged in interstate operations.

The injunction was granted against the post-masters and against, I think, one of the marshals, the other marshal having meanwhile ceased to be such officer, and no substitution having been made.

Mr. Boudin: If your Honor please, on this question of decree, I want to join in the opposition to its being admitted, although I would not like to put the matter on the technical question of its admissibility in evidence but rather as to its weight if put in evidence. The objection to its being put in evidence is really that it is not material to the issues in this case. To begin with, I doubt very much whether one governmental agency can stipulate away the rights of another governmental agency representing the public for an entirely different

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purpose. It is true, of course, that a judgment *pro confesso*, as Judge Ransom very correctly said, is a judgment like any other, but is only limited to the particular matter with which it deals. I think anyone will admit that we could not here in this proceeding enter into a stipulation even though reduced to Judgment which would affect another agency in a matter covered by an entirely different law, set up for an entirely different purpose. It would be rather odd if the Securities and Exchange Commission could stipulate away the rights of the National Labor Relations Board which in this case represents certain individuals of the public who can only bring their complaints before a Court through the medium of a National Labor Relations Board. Concededly, the complainants in this case were not parties to the action in which the judgment was entered, and while nominally the National Labor Relations Board appears as complainant, we cannot overlook the reality that there are entirely different people involved in this matter and that it would be a construction which Judge Ransom tries to put upon the action of counsel for the Securities and Exchange Commission,—would be of stipulating away rights of the public with

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which they were not concerned and over which they were not set up as guardians. But, in addition to that, it seems to me that even if the case had actually been tried and everybody served, the proper parties brought in in

S. M. 32

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that case, it would still be immaterial in this case, not only because of the different wording of the Statute; and I am informed here, subject to checking up, that there are certain specific exemptions in the Securities and Exchange Act which deal specifically with this class of corporations, to exclude them from its operations of that Act, assuming that the question were one of interstate commerce, and assuming that there were an actual binding decision that they were not engaged in interstate commerce, the judgment in the case would still not be material in this case, because I claim that the question in this case is not whether they are engaged in interstate commerce but whether interstate commerce is affected by the activities, and particularly by the possible cessation of activities, which is really the matter involved in all of these disputes.

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Judge Ransom: I think I should perhaps, in fairness to all concerned, state what the procedural status was with respect to the final order of a decree *pro confesso* and the subsequent entering of that decree. There was a stipulation that defendants Lamar Hardy and Leo J. Hickey, the two United States attorneys, do not oppose the entry of an order of a decree *pro confesso* against them, in the order annexed. Then later the situation, as to certain other defendants, was disposed of by virtue of the motion. The final decree was made after motions by the defendant Hardy and Hickey to dismiss the bill

S. M. 33

of complaint had been denied and final decree was



entered against them. There was no contest on the part of the very able representatives of the government of the facts that the plaintiff companies in that act, who are the respondents here, were not engaged in interstate commerce in the year 1935.

Mr. Moscovitz: Mr. Examiner, I—

Trial Examiner Gates: Did this apply to a corporate setup which would involve the actual transmission in interstate commerce, transmission across state lines?

Judge Ransom: No, the question involved was broadly in that case whether any of the corporate plaintiffs in that action were engaged in interstate commerce, and I might, in order to complete my offer at this time, offer also a similarly certified copy of the opinion of Judge Caffey in entering the judgment to which this judgment roll relates.

Mr. Moscovitz: I have the same objection to that, Mr. Examiner.

Judge Ransom: I offer both. This was the opinion filed June 31st, 1936, in United States District Court for the Southern District of New York. Judge Caffey accurately said, in his opinion, "A *defect pro confesso* admits only well pleaded facts (*Thomson versus Wooster, supra*). Confining consideration to those, the concession by the five defendants is not of the conclusions alleged in the bill or of the plaintiffs' claim of right either to

S. M. 34

an injunction or to a declaratory judgment. The concession is merely that the corporate plaintiffs are engaged exclusively in intra-State business and do nothing which directly burdens or affects interstate or foreign commerce."

Mr. Moscovitz: Of course, we are having an argument at this time, Mr. Examiner, on the law of the case which I do not think is—

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Judge Ransom: I agree with you, sir. I am sorry if I offended.

Mr. Moscovitz: It is not an offense at all, except that I simply wanted to point that out.

Trial Examiner Gates: Both offers are admitted.

Mr. Moscovitz: Exception.

(Documents referred to received in evidence marked Respondent's Exhibits No. 1 and No. 2 respectively.)

Judge Ransom: That, sir, is the only evidence on behalf of the respondents on the question of jurisdiction. I am able now to read into the record the telegram to which I previously referred: "Re Consolidated Edison Case. Board has denied request for hearing upon motion to dismiss the complaint and will hold in abeyance determination of motion until after full hearing on complaint has been held. Formal order follows. Signed, National Labor Relations Board, Benedict Wolfe". I think your Honor may or may not be aware that under

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an understanding which I think correctly state between representatives of the Board and myself, today's hearing was to be for the taking of the testimony upon the jurisdictional phase of the case. That is now completed. Under the ruling of the Board, I take it, to which we have excepted, the consideration of determination of the motion to dismiss is held in abeyance until there has been completed before your Honor the hearing upon the merits, and if you are ready we shall be glad to; at least I shall be, and I think Mr. Moscovitz will be, to discuss with you the question on which we can go ahead on the merits of the case.

(Discussion off the record.)

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Trial Examiner Gates: Is there anything further today?

Mr. Moscovitz: No, there is not.

Mr. Ransom: Nothing further for the respondents.

Trial Examiner Gates: We will recess until 2:00

P. M., Thursday, June 10th.

## ADJOURNMENT

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Minutes of Hearing, Held June 10, 1937

BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
SECOND REGION

IN THE MATTER

of

485 CONSOLIDATED EDISON COMPANY OF NEW  
YORK, INC., and its affiliated companies,  
BROOKLYN EDISON COMPANY, INC.,  
NEW YORK & QUEENS ELECTRIC LIGHT  
& POWER COMPANY,  
WESTCHESTER LIGHTING COMPANY,  
THE YONKERS ELECTRIC LIGHT AND  
POWER COMPANY,  
NEW YORK STEAM CORPORATION,  
CONSOLIDATED TELEGRAPH & ELECTRIC  
SUBWAY COMPANY,

*Respondents,*

and

486 UNITED ELECTRICAL AND RADIO WORKERS  
OF AMERICA, Affiliated with the COMMITTEE  
FOR INDUSTRIAL ORGANIZATION.

Case No.  
II-C 224

14 Vesey Street,  
New York City, N. Y.,  
June 10, 1937.

The above entitled matter came on for hearing pursuant to adjournment taken June 3, 1937, at 2:00 P. M.

Before:

ROBERT M. GATES, Trial Examiner.



**Appearances:**

**DAVID A. MOSCOVITZ, Esq., Attorney for the National**

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**Labor Relations Board:**

**WILL MASLOW, Esq., Attorney for the National Labor Relations Board.**

**LOUIS B. BOUDIN and SIDNEY ELLIOTT COHN, 8 West 40th Street, New York, New York, appearing for United Electrical and Radio Workers Local 1212.**

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**MESSRS. WHITMAN, RANSOM, COULSON & GOETZ, 40 Wall Street, New York City, New York (By William L. Ransom and Pincus M. Berkson), appearing for the respondent companies.**

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**Trial Examiner Gates:** Whenever you are ready, gentlemen.

**Mr. Moscovitz:** Are there going to be further arguments on the motions to intervene, Mr. Examiner?

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**Trial Examiner Gates:** If any petitioner feels that he has not fully stated his case he may be heard further. It is pretty well covered, however.

**Mr. Fink:** I think we submitted everything we possibly could in the last hearing. I think the words speak for themselves.

**Trial Examiner Gates:** Does the government wish to be heard any further?

**Mr. Moscovitz:** No, I have nothing further to add to the position which I took at the last hearing date.

**Trial Examiner Gates:** The petition of the Independent Union presented by Mr. Redfield is denied.

*Proceedings*

The petition of the Independent Gas and Electric Workers Union of Westchester County, presented by Mr. Fink, is also denied.

Mr. Moscovitz: I would like to introduce into the record a copy of an order received from the Board denying the respondent's petition or motion to dismiss the complaint before hearing is held on the complaint.

Judge Ransom: There is no objection on behalf of the respondents to receiving the order as a part of the record.

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Trial Examiner Gates: It will be admitted—

Judge Ransom: For the purposes of the record, I am not sure and I do not know what exactly the proper procedure may be, but I would like, in any event to note upon the record the respectful exception of the respondents jointly and severally to the order of June 2, 1937, made by the Board and to the refusal of the Board to grant the motion and the request made on behalf of the respondents under date of May 17th.

Mr. Moscovitz: I would like to bring to your attention at this time, Mr. Examiner, that yesterday, in the afternoon, I served Judge Ransom with a copy of a motion to amend the complaint which is before you today. The motion to amend goes to paragraph 19 of the original complaint by adding thereto, as one of the discharged persons named in that paragraph, the name of Stephen L. Solosy. This amendment makes it necessary, Mr. Examiner, to also amend paragraph 20 of the original complaint as well as paragraph 21 of the original complaint by adding thereto in the respective paragraphs the name of Stephen L. Solosy.

I will introduce at this time, if I may, the copy of the notice of motion to amend, which spells out more

particularly the language of the complaint as amended.

Judge Ransom: Reserving our objections to the complaint, the jurisdiction, and the proceedings, we have no

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objection to the allowance of the amendment.

Trial Examiner Gates: Motion granted.

Judge Ransom: I take it that for the purposes of the record that the motions which I made at the last hearing, which were addressed to the complaint as it then stood, may be considered as addressed to the complaint as now amended, and I assume that they would come within the purview of the action of the Board in reserving the consideration of that motion until this hearing has been completed.

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Trial Examiner Gates: That is correct.

Mr. Moscovitz: Mr. Examiner, I think it should also be pointed out that there has not yet been filed in this proceeding by Judge Ransom, as counsel for the respondents, an answer. We are not raising any technical objection to the failure of counsel to file the answer so far, except that I would be interested at this point to learn whether or not Judge Ransom contemplates filing an answer to the complaint so that I may conduct myself accordingly.

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Judge Ransom: Well, sir, I am glad to state that for the record. I take it that under the rules of the Board and probably also under applicable principles of law, the respondents would have a right to answer here without prejudice and need not absent themselves from the proceeding or refuse to co-operate in bringing before

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this Board pertinent facts, tribunal having jurisdiction over this complaint.

*Proceedings*

Therefore, it has been, and is the intention of the respondents here, without waiving their fundamental objection, to answer and to take part. I had expected to have an answer on behalf of respondents available to serve before this hearing today. As your Honor knows I was away on Tuesday afternoon and yesterday and in my absence the complaint was amended. Under those circumstances, returning to the city this morning, I was not able to make the necessary revisions but if it is agreeable to your Honor and to Mr. Moscovitz, the answer will be served at least within the week.

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(Documents referred to received in evidence marked Board's Exhibits No. 4 and No. 5 respectively.)

Mr. Moscovitz: I have no objection to that plan, Mr. Examiner.

Trial Examiner Gates: I merely note for the record that under the rules and regulations an answer will be filed within ten days.

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Mr. Ransom: I take it, sir, that that would extend from and begin at the time at which this amendment was filed; namely, on yesterday, and therefore the period provided in the rules for the presentation of answer would be, in fact, ten days from that time.

However, we do not intend to avail ourselves of that. We do not make any technical objection to it, that this

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hearing is proceeding in advance of the filing of an answer before the expiration of the period provided for in the rules, as I understand it, for the filing of an answer.

Mr. Moscovitz: Do you want to hear me on that?

Trial Examiner Gates: No.

Mr. Moscovitz: We are ready to proceed.



*Harold Straub—For N.L.R.B.—Direct*

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I would like first to inquire—well, there is no necessity for inquiring, I see the person has not responded to the subpoena that was served upon him yesterday, as yet. Therefore, I will wait to call the contemplated witness until tomorrow. At this time I will call Mr. Harold Straub.

HAROLD STRAUB, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

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*Direct Examination:*

Q. (By Mr. Moscovitz) Please state your full name?

A. Harold Straub.

Q. Your address? A. 2440 MacLay Avenue, Bronx.

Q. By whom are you employed at the present time?

A. Consolidated Edison Company of New York.

Q. Have you responded today to the service of a subpoena by the National Labor Relations Board? A. I have.

Q. In what capacity are you employed by the Con-

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solidated Electric Company? A. My payroll title is that of first grade lineman while I am actually working as a cable splicer.

Judge Ransom: I am having difficulty in hearing you. Would you keep your voice up?

The Witness: Yes, sir.

Q. (By Mr. Moscovitz) And when you say your actual classification is first grade lineman, but that you are now employed as a cable splicer, will you explain what you mean by that statement? A. Well, the actual

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*Harold Straub—For N.L.R.B.—Direct*

work that I am doing is that of a cable splicer. Several years ago I went to a cable splicing school and did work in cable splicing although my payroll classification was never changed. After having worked as a cable splicer I went back to doing line work and since that time I have been transferred to Manhattan as a cable splicer, doing the work that I theretofore did as a cable splicer. I am now doing cable splicing in Manhattan.

Q. When did that happen? I mean by that, your transfer back to Manhattan as a cable splicer? A.

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Approximately three weeks ago.

Q. How long did you engage in or how long had you been before that, employed as a first grade lineman?

A. For a period of seven years.

Q. Has there been a change in your rate of pay since

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you were transferred to the new work? A. No, there has not.

Q. Has there been any change of the hourly scale?

A. No, there has not.

Q. No change in the hourly scale; is that right? A.

504

That is true.

Q. As a cable splicer, will you—would you say that a cable splicer job is a job ranking below that of a first grade lineman?

Judge Kansom: Objected to as incompetent, immaterial and irrelevant and not within any issues in this complaint. This gentleman is not one of the alleged discharged employees, under any amendment as so far served upon us.

Trial Examiner Gates: You may answer.

The Witness: I may answer?

Trial Examiner Gates: Yes.

*Harold Straub—For N.L.R.B.—Direct*

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The Witness: The jobs are about equal. There is no actual difference between cable splicer and lineman because a cable splicer and lineman are practically the same thing in pay and so forth.

Q. (By Mr. Moscovitz) How long have you worked for the Consolidated Edison Company, all told? A. For a period of a little better than ten years.

Q. What is your weekly pay at this time? A. \$43.20.

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Q. Did you, at the time that you went into the employ of the company, become a member of any labor organization. A. Not at that particular time. There was no labor organization in existence among the employees of the Consolidated Edison Company ten years ago.

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Q. Were you at that time—

Judge Ransom: (interposing) Just a moment please. I think, perhaps, you would wish to get the record correct. I would like to have the facts. The witness speaks about entering the employ of the Consolidated Edison Company ten years ago. Would it not be well to find out what company he did work for?

507

Mr. Moscovitz: Yes, indeed.

Q. (By Mr. Moscovitz) What company were you employed by at that time? A. The company formerly known as the Bronx Gas and Electric Company.

Q. The Bronx Gas and Electric Company? A. Yes.

Q. How long, then, were you in the employ, how long were you in the employ of that company? A. From March, 1927, until December 23, 1936, at which time the Bronx Gas and Electric Company was merged into the Consolidated Edison Company of New York.

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*Harold Straub—For N.L.R.B.—Direct*

Q. At the time you went to work for the company in

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1927, were you a member of any labor organization?

A. No, I was not.

Q. And you say that at that time there was no labor organization in existence in the company? A. No, sir, there was not.

Q. Now, did you at any time after your original employment become a member of any labor organization?

509

Judge Ransom: Objected to as not within any issues here.

Trial Examiner Gates: He may answer.

Judge Ransom: Exception.

A. I became affiliated with the employee representation plan in the Bronx Gas & Electric Company.

Q. (By Mr. Moscovitz) When was that? A. I believe that Plan was started some time in 1934.

Q. Until that time you had belonged to no labor organization? A. No, sir, I had not.

Q. Were you a member of this Employee Representation Plan or were you an officer? A. The first year I was only a member of the Employee Representation Plan; the first year of the Employee's Plan's existence.

510

Q. Was that plan only in existence in the company in which you were employed or was that plan in exist-

S. M. 47

ence throughout the Consolidated Edison System? A. The particular plan which we belonged to was in existence in the Bronx Gas and Electric Company but there were, I understand, thirteen similar plans, a plan covering each company in the Consolidated Edison.



*Harold Straub—For N.L.R.B.—Direct*

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Judge Ransom: I move to strike out the witness' answer as purely hearsay and having no probative value here. There is no complaint here involving the Employee Representation Plan.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Were you one of the charter members of this Employee Representation Plan? A. As I can understand, or as I can remember, there was no such thing as a charter member. There were certain definite people used—perhaps "used" is the wrong word; there were certain definite people, with the cooperation of the management, who started out the Employee Representation Plan in the different companies.

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Judge Ransom: I move to strike out the answer as not responsive and highly incompetent. There is no issue as presented here of any complaint of that nature; there is no complaint made of that.

Trial Examiner Gates: The question has not been completely answered.

Q. (By Mr. Moscovitz) As I understand the answer,

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you were not a charter member, is that it? A. That is true.

Q. And you—

Judge Ransom: I object to this whole line of examination because the proof shows there is no evidence that there was any charter member or anything like a charter member. You might as well talk about a charter member of the City of New York as a voter.

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*Harold Straub—For N.L.R.B.—Direct*

Trial Examiner Gates: It may stand.  
 Judge Ransom: Exception.

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Q. (By Mr. Moscovitz) Did you have anything at all to do with the organization of this employee representation plan? A. Yes, I did.

515

Q. Tell us what your organizational association was with this plan. A. That involved quite a detailed explanation. I cannot remember the exact dates, but I distinctly recall coming to work one morning in the Bronx Gas & Electric Company and being called by a supervisor, the man that I worked for.

Q. What is his name? A. Mr. Fitzsimmons. He is since dead. I remember being told to go home and change my clothes and report back to him. I think it was nine or ten o'clock; I had not the slightest idea what it was about. I did as I was told and I met him and came back and reported to him at ten o'clock and he told me that I was to accompany him and another man by the name of Mr. Duncellen, and another man by the name of Newport up to the office of the Westchester Lighting Company.

516

Q. Were those men both employees of the same company? A. They were.

Q. Were they supervisory employees, or regular employees? A. No, regular employees. Went up to Westchester Lighting Company and met a Mr. Wilder, the vice-president, Stewart Wilder, vice-president of the

S. M. 50

Westchester Lighting Company, the Yonkers Electric Light & Power, and the Bronx Gas & Electric Company.

Q. Was he vice-president of all those companies? A. That's right.

*Harold Straub—For N.L.R.B.—Direct*

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Q. Yes. A. We spoke to Mr. Wilder for a few minutes and we were brought into the office of a Mr. Rosenquest, president of the same three companies. We were introduced to Mr. Rosenquest and we talked to him a few minutes and he said he understood we had been sent up there by the employees to start a means of collective bargaining between management of the company and employees of the company.

Personally, it was the first I had heard of the thing. I thought it was a good plan the way it was outlined at that time. We got forms that were furnished us by the management of the company.

518

Q. When you say the management of the company, do you mean by this same president and vice-president? A. That's right.

Q. Yes. A. And these forms had a statement on it requesting that a vote be held to set up a means of collective bargaining between the employees of the Bronx Gas & Electric Company and the management of that company, and I was one of the three fellows that went

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around with these forms and got various employees in my particular department to sign them.

519

Q. Who told you to do that? A. It was understood by the management of the company that we were supposed to do that—

Judge Ransom: I move to strike out the answer—not what he understood—the question was, wasn't it? The witness gives just a general conclusion.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

A. I was furnished with the use of a company car.

520

*Harold Straub—For N.L.R.B.—Direct*

Q. (By Mr. Moscovitz) By whom? A. By the transport man in charge of transportation for the Bronx Gas & Electric Company, at the request of the foreman in my department, that this transportation be given me in order to contact the various employees in my department and have them sign this petition.

Q. Yes. How much time did you spend in this activity at that time? A. About two days.

521

Q. Yes. And did you distribute the cards to which you have referred? A. There weren't any cards to be distributed. It was a form. They were clipped together. It was one mimeographed page and all the rest of them just had lines on them and the fellows read it and talked it over and finally signed all of it—

S. M. 52

Q. And did the signing indicate immediate membership in the new organization? A. No.

Q. What did it indicate? A. It indicated that they were desirous of having a poll taken amongst the employees of the company, with the view of setting up a means of collective bargaining between the management of the company and the employees of the company.

522

Q. Was such a vote taken? A. It was.

Q. Do you recall when that was? A. I can't recall the exact date. I do believe it was in March.

Q. What year? A. 1935—I am not positive.

Q. Was a vote taken in all the other companies at the same time to a plan, do you know? A. Not at the same time.

Judge Ransom: Objected to as incompetent. The witness has not shown any qualification to answer. Besides, it is outside of the issues.

Trial Examiner Gates: He may answer, if he knows.



A. There was a vote taken in the other companies, but not at the same time.

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Q. (By Mr. Moscovitz) When you say the other companies, what companies do you refer to? A. The New York Edison, Consolidated, Brooklyn, Westchester, New York & Queens, and Yonkers, and the New York Steam and the Consolidated Electric & Subway Company.

Q. Were they all subsequent to the election in your own company? A. Some were before our own particular election and others were held after that.

524

Q. What was the result of the vote in your company?

A. The employee representation plan was put into effect at that company.

Q. By whom was it put into effect?

Judge Ransom: Objected to as incompetent, calling for a conclusion. Let him state if the employees voted for it or voted against it. That is evidence.

Trial Examiner Gates: He may answer.

A. Would you repeat the question?

525

(Question read.)

A. The vote was taken. The employees themselves voted on the plan and I do not definitely say just who put the plan into effect. All the literature, a copy of the plan itself, was given to the employees by the management of the company. It was paid for by the management of the company. They wrote it up. They furnished us with a

S. M. 54

constitution for it.

Q. And after the vote, when it was established that

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*Harold Straub—For N.L.R.B.—Direct*

the employee representation plan was to be the bargaining agency for the men, was there an election of officers?

A. There was an election of both representatives and officers.

Q. Yes. And were you elected as either a representative or officer? A. Not at that time.

Q. Were you elected as either a representative or officer at any time? A. The following year.

Q. What year was that? A. 1935, March of 1935.

527 Q. To what were you elected? A. I was elected as the representative of the general council, Bronx Gas & Electric Company, for the employees of the overhead construction department.

Q. What is the duty, or what are the duties of a representative? A. We were supposed to represent the employees.

Q. And how many employees did a representative represent? A. In the constitution of the employee representation plan that I was in, there was one representative allowed for each 50 employees in any one department, or a fraction thereof.

528 S. M. 55

Q. And how many representatives were there in your plant or company? A. There were approximately 15 or 16. I can't exactly remember. There were about 480-some-odd employees in the company, and there was one representative for each 50.

Q. With whom did you deal in your representative capacity? A. The committee appointed by the management of the companies that I have mentioned, the Westchester, Yonkers, and Bronx Companies.

Q. Do you recall who they were? A. I never met this committee as a whole. I understood that Mr. Rosenquest at that time, Mr. Wilder, and some other gentle-

men whose names I cannot recall, and a Mr. A. L. Carroll was appointed secretary of the management committee. He was the man with whom we dealt directly.

Q. Was this management committee a committee composed of representatives of each of the companies which you have already listed? A. Do you mean the employees?

Q. No, the employer management committee? A. Well, the management of the company of these three companies were set up to cover the three companies. I understand that the same management committee dealt with the problems of the Westchester Company and of the Yonkers Electric Light & Power Company. I know

530

S. M. 56

definitely that they dealt with the same secretary of the management committee.

Q. Was there ever a change in that system of negotiation? A. After we were merged, after the Bronx Gas & Electric was merged into the Consolidated Edison of New York.

Q. When was that? A. December 23, 1936, we established for the employees of the Bronx Gas & Electric Company a contact with Col. Stillwell, vice-president of the Consolidated Edison Company, I believe in charge of the employees personnel and so forth.

531

Q. And was he the person with whom you negotiated from that time on? A. He was.

Q. How much of your time did you generally spend in this kind of work? A. The greatest portion of it.

Q. The greatest portion of your working time? A. That's right.

Q. By whom were you paid for the time that you spend doing this work? A. I received my weekly pay envelope the same as if I had been out on of a job.

Q. And does the same go for the other representatives? A. Yes.

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*Harold Straub—For N.L.R.B.—Direct*

S. M. 57

Q. And for the council members? A. Those of them that were required to spend any time in representing the employees, were making contacts either among the employees themselves or talking to the various department heads or supervisors over the management of the company themselves, they were always paid for the time they spent.

Q. Can you tell us simply how the plan would work, or how it was set up as a matter of technical action—

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Judge Ransom: Objected to as in no way the best evidence. The plan would speak for itself. No foundation laid.

Trial Examiner Gates: You may answer the question.

Judge Ransom: Exception.

534

A. The plan of the Bronx Gas & Electric Company differed from the plans in practice in the other companies, inasmuch as we were not a large enough company to put it into effect, to put into effect the various councils that were outlined in the constitution of the Bronx Gas & Electric Company plan, but in the other companies they were doing work according to their own constitution, and I believe the set-up was to elect a certain number of employees from each department and form what is known as a Bureau Council.

These Bureau Council men in turn elected a chairman, a chairman of comparable bureaus all over the system, in turn met and formed what is known as a department council. These department councils in turn

S. M. 58

elected a chairman who then became a member of the general council that was the original set-up of our plan, and of the New York Edison Company plan.



Q. What were the duties of the members of the general council? A. The duties of the members of the general council were to represent the employees, to take up their various grievances to the management, etc.

Q. Now, before, when you stated that you received your check from the company, despite the fact that you were doing representation work, did you, in addition to that payment by the company, receive any miscellaneous expense payments? A. At any time that I incurred any additional expense I was paid for them by the company, yes.

Q. Was there any working arrangement between yourself, or, rather, between yourself as a representative and the other representatives in your company, with the company, for payment of moneys expended by you in your employee representation work?

Judge Ransom: Just a moment. I do not want to keep renewing objections, but I do want the record to show, if it may, that I have an objection to this general line, that it is not within any issue tendered by the complaint; not within any issue of which the respondents have notice or have reason to express within the scope of this hearing. This complaint makes certain rather definite

S. M. 59

charges. None of those charges remotely or indirectly, even relate to the testimony that this witness has given thus far.

Trial Examiner Gates: May it be understood that your objection goes to the whole line?

Judge Ransom: Yes, and I respectfully except to your Honor's ruling in all those respects.

Mr. Moscovitz: Now, will you read back my rather long question?

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*Harold Straub—For N.L.R.B.—Direct*

(Question read.)

A. There was no arrangement worked out between myself and other general council chairmen in conjunction with the management of the company. Any arrangements that there were between myself and between the management of the company was an individual arrangement, although it did apply to the other chairmen.

Q. Yes, now, what was the individual arrangement which you worked out which applied also to the other chairmen?

539

Judge Ransom: Object to it with relation to other chairmen. He said the arrangement was purely individual.

Trial Examiner Gates: Objection sustained.

Q. (By Mr. Moscovitz) What was the arrangement that you worked out as a member of the council with the company? A. I didn't work out the arrangement. I inherited it.

Q. Now, explain how you inherited the arrangement.

A. The previous chairman, the chairman of the previous

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S. M. 60

council, evidently worked out the arrangement.

Q. What was his name? A. There were two of them prior to myself, Mr. Brennan, and Mr. Ray Corcoran.

Q. What was the arrangement that was there that you inherited? A. When I took over the office of chairman of the general council I was told by Mr. Corcoran that there was a definite expense account allowed for the chairman of the council in any expense that might be incurred, that at any time I incurred any expense I was to submit it under a heading and it would be approved and it would be paid, and it was.

Q. To whom did you submit this for approval? A.

*Harold Straw—For N.L.R.B.—Direct*

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Mr. P. B. Elliott, my department head. Mr. Elliott would sign the voucher and I would bring it down to the cashier and present it to him and he would pay it.

Q. No question ever raised about the amount of your expenditures? A. None whatever.

Q. What amount would they run? A. I attempted to be honest about it and never charged the management of the company more than I actually spent, so mine never run very high.

Q. Do you know of—

Judge Ransom: I move to strike out "very high." Let him state something definite.

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S. M. 61

Q. (By Mr. Moscovitz) State, if you recall, the amounts. A. The highest amount I believe I ever passed was one for about \$2.50, but there was no definite limit on it. No one ever told me there was a certain set amount I should get.

Q. How often would you submit accounts like that? A. As often as I incurred any expense. Sometimes two or three times a week, and sometimes once a week, or once a month.

543

Q. What were the items you would spend this money on? A. Carfare, lunch money, attending various meetings with other council chairmen in different parts of the system, and any incidentals.

Q. Now, would you come and go in this work as you pleased? A. Absolutely.

Q. You have explained already, have you not, that each employee of the representation plan was in the company, and had his own general council, is that right? A. That is right. That was the primary set-up.

Q. And each general council, in turn, had its chairman? A. That is right.

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*Harold Straub—For N.L.R.B.—Direct*

Q. Do you recall who the most active chairman of the general councils were in the respective companies?

Judge Ransom: Objected to as immaterial and not within the issues here.

Trial Examiner Gates: Overruled.

S. M. 62

Q. (By Mr. Moscovitz) Take your first, if you can, the Yonkers Electric Light & Power Company. A. There was a general chairman, as I recall it, and there was a chairman of each one of them. In that case there was a gentleman, I knew him, of that group; the newly-elected chairman for the year 1937 was a man by the name of Drury, and the previous chairman was a man by the name of Mr. McGowan.

Q. With regard to the Westchester Lighting Company? A. Mr. Quain was the chairman.

Q. With regard to the Consolidated Gas Company, who was the chairman? A. Mr. George Parker.

Q. The Edison Company of New York—New York Edison Company? A. Mr. Charles—I beg your pardon, Mr. William B. Genpley.

Q. Of the Brooklyn Edison Company? A. Mr. Clausen, or Mr. Claussen.

Q. Was it C-l-a-u-s-e-n? A. I could not say as to that.

Q. New York & Queens Lighting & Power Company? A. Patrick Kerry.

Q. And you were for the Bronx Gas & Electric Company. A. That is right.

Q. Were there any others? A. There were others,

S. M. 63

but I do not recall the names. There was the chairman of the New York Steam; there was the chairman of the Consolidated Telegraph & Electric Subway Company. That is about all.



Q. You do not, at this point, recall their names? A. No, I do not.

Q. Do you recall who, among the men that you have listed, were considered by the chairman as the most active men in this work?

Judge Ransom: Objected to as immaterial and not a proper method of proof.

Trial Examiner Gates: Read the question.

(Question read.)

Mr. Moscovitz: I withdraw the question.

Q. (By Mr. Moscovitz) As the chairman of the council, did you meet with other chairmen, from time to time, in the general council? A. Oh, yes. We met with one another quite frequently.

Q. Did you meet as a body, as one body? A. Yes.

Q. Did you take up questions peculiar to your respective companies? A. We did, among ourselves, but we never succeeded in getting them to the management of the company as a request from the 40,000 employees of the entire system.

Q. Of the men who sat as chairmen in this general meeting, from time to time, were there any who might have met and did meet more frequently or more often with their managers than the rest of you? A. I am sorry, I do not understand the question.

Q. Of the men who sat as chairmen in these general

S. M. 64

meetings from time to time, were there any who might have met and did meet more often with managers, I mean with the management itself, than the rest of you? A. Oh, yes. There were of this group of the chairmen the men who met more often with the management than the rest of us did.

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*Harold Straub—For N.L.R.B.—Direct*

Q. Who were they? A. Mr. George Parker of the Consolidated Gas Company and Mr. William B. Ganley of the New York Edison Company.

Q. Were they considered by you as the most active chairmen of the group?

Judge Ransom: Objected to as incompetent. How can you testify what others did. The question is indefinite, anyway.

Trial Examiner Gates: Sustained.

551

Q. (By Mr. Moscovitz) As I recall your testimony, you stated that the various general councils were held, from time to time, with Mr. F. L. Carlisle, the chairman of the board of directors of the Consolidated Edison Company; is that right? A. That is right.

S. M. 65

Q. Will you give us, again, the date when those conferences took place; or, rather, when the practice started? A. What was that?

552

Q. Will you give us, again, the date when this practice started? A. Oh, it had probably started before I came into the picture as a general council chairman, but I can give you the dates of the meetings that I attended, rather, in a general way, not the particular dates.

Q. Do you recall the first date? A. I do.

Q. When? A. July of 1936 all of the general council chairmen met in conjunction with Mr. Carlisle, the chairman of the board of directors, and the various members of the different managements of the several companies.

Q. Do you recall their names? A. Well, I do. At that time there was a Mr. Smith, president of the Consolidated—of the New York Edison Company, Mr. Robert B. Grove, Vice-president of the New York Edison Company, Col. John Stillwell, Vice-president, Consoli-

dated Gas Company, Mr. Edward P. Prezzano, president of the Westchester Lighting Company, and several other gentlemen whose names I do not now recall.

S. M. 66

Q. You say that this meeting was in July, 1936? A. Yes.

Q. Where was the first meeting that you attended; was that the first meeting you attended? A. Yes, sir.

Q. Were the other chairmen in attendance? A. Yes.

Q. Were those chairmen the ones that you have already listed? A. That is right. With one or two exceptions. Mr. Drury was not at this time the chairman of the Yonkers Company, Mr. McGowan was the chairman of that company. I believe that is the only difference.

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Q. Did you at this meeting take up regular employee representation plan business? A. Those meetings were called primarily to have Mr. Carlisle explain that some definite point or some definite decision the management had made that would affect all of the employees in all of the various companies of the Edison system.

Q. Give us an example. A. For example, the first meeting was called to notify the employees, that was, as I recall it, a meeting that was to notify the employees at some time in August, 1936, the restoration of the four and one-sixth per cent. pay cut would be made to the employees; that was the prime reason for that meeting

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was held.

Q. Would you just then take this information back to your members? A. We would.

Q. Do you recall when it was that you next met with Mr. Carlisle? A. I do not know if it was exactly on the

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*Harold Straub—For N.L.R.B.—Direct*

day of December 23rd, but it was within that week, it was either the 22nd or the 23rd of December, 1936.

Q. Were the same chairmen there? A. Yes.

Q. The same officers of the company that you have already listed? A. I believe that in conjunction with Mr. Smith, president of the New York Edison Company, that Mr. Tapscott also attended that meeting.

Q. Was this meeting similar to the preceding one? A. Yes, with the difference that there was a different topic discussed.

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Q. And the topic, just as an example, was what? A. Why, there had been quite a bit of agitation or quite a bit of rumor being spread through the system, and I mean, "through the system," I mean the Edison system, to the effect that the management were considering paying a bonus, a Christmas bonus at that particular time.

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Mr. Carlisle, in opening the meeting, told us that the management did not consider paying the bonus then and went on to give us various reasons why. But, he stated among other things that one and one-half time would be paid for overtime and that they were allotting a certain definite sum of money for the pension plan by employees. I have forgotten just how many millions of dollars, also, would be spent within the year of 1937 for plant extension.

Q. Do you recall when it was that you next met? A. Yes, indeed, I do.

Q. When was that? A. Tuesday, April 20, 1937.

Q. At what time? A. 11 o'clock a. m.

Q. When and where? A. At that time in the Board Room of the company building at No. 4 Irving Place, New York City, N. Y.

Q. Tuesday, April 20, 1937? A. Yes, sir.



Q. Was that the board room of the Consolidated Edison Company? A. I believe it is. It is located at 14—I beg your pardon—at No. 4 Irving Place.

Q. No. 4 Irving Place? A. Yes.

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Q. When you say “the board room,” of course you mean the board of directors? A. Yes, sir.

\* Q. Of the company? A. Yes, sir.

Q. Who attended the meeting for the companies? A. The same officials of the companies that I have formerly named before, with the exception that Mr. Fogg, Colonel Fogg, I believe, he is the Vice Chairman of the Board of Directors of the Consolidated Edison also attended the meeting. 560

Q. The same general council representatives? A. General council chairmen.

Q. General council chairmen? A. Same general council chairmen.

Q. Any changes in the list that you have already given us? A. With the exception, of course, that Mr. Drury then had been elected chairman of the Yonkers Light & Power Company in place of Mr. McGowan. 561

Q. Tell us what took place at that meeting. A. Mr. Carlisle opened the meeting by informing the employees of a surprise, the surprise that the electrical industry had received in the Wagner Act being upheld; the Wagner Act being held constitutional by the United States Supreme Court.

He went on to add that it was a surprise not only to

S. M. 70

the electrical industry but practically all industry. He said, “While we do not operate under the Wagner Act, there is pending in Albany legislation known as the

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*Harold Straub—For N.L.R.B.—Direct*

Doyle-Neustein Bill, the so-called Little Wagner Act," which will definitely bring us within the scope of the legislation.

He then read passages from this proposed Doyle-Neustein Bill and commented on it, saying how impossible it would be for the company to continue to support the company union—

Q. Was that remark in reference to the organizations that you men were then representing?

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Judge Ransom: I object, I call your attention to the utter impossibility of answering the question, and as calling for a conclusion on the part of the witness.

Trial Examiner Gates: He may state what Mr. Carlisle said, if anything.

The Witness: Mr. Carlisle then added that he had received a communication from a Mr. Daniel Tracy, International president of the International Brotherhood of Electrical Workers—

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Q. (By Mr. Moscovitz) You have not answered my question. I asked you whether or not the reference made by Mr. Carlisle to the support of company unions was to the councils that you gentlemen were then representing?

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Judge Ransom: I object to the renewal of that question. It is quite improper. He said what Mr. Carlisle stated, and now this is an effort to make Mr. Carlisle's statement relate to something which it does not appear from what Mr. Carlisle said, it related.

Trial Examiner Gates: I have ruled on that.

Q. (By the Trial Examiner) Do you understand my ruling, Mr. Witness? A. No, sir, I do not. I do not

quite understand what you said, exactly. I understand the general question to be different from what the ruling was, I mean. The ruling said that I should go on and say what Mr. Carlisle said.

Q. If he said in respect of that anything, you may state what he said and if he did not, you do not have to answer. A. Very well.

Q. (By Mr. Moscovitz) Well, you have already testified that Mr. Carlisle made some statements to the effect that the company could not continue the support of the company unions. A. That is right.

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Q. Did he make any statement as to whether or not he was referring to, specifically, the employee representation plans that you gentlemen were then representing in the various companies? A. It was the first time that

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I ever heard it called "company union," prior to that we called it employee representation plan and it could not be anything else because there was no other union in the field, so I felt there could not be anything else that he was applying his remarks to.

Q. You told, and I believe you said something about Mr. Tracy? A. Yes.

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Q. Proceed to what you were telling us about Mr. Tracy. A. Yes, sir. Mr. Carlisle went on to speak, after reading several passages of the Doyle-Neustein Bill, that he had received a communication from Daniel Tracy of the International Brotherhood of—rather, from Daniel Tracy, who was the International president of the International Brotherhood of Electrical Workers asking that that brotherhood be recognized as the sole bargaining body for the employees of the Consolidated Edison Company.

He said that he was answering this communication

and according them recognition, that recognition, and the International Brotherhood would receive it; in other words, that he was going to answer that communication and accord that recognition to the International Brotherhood of Electrical Workers.

Q. Did that finish his statement to you? A. Right at that particular time it did.

Q. At that point when Mr. Carlisle stated that he

S. M. 73

569 had agreed to accord the International Brotherhood of Electrical Workers this recognition, was there any statement made by any of the men regarding the question of whether or not any of the employees of the system belonged to the I.B.E.W.? A. Oh, very definitely. Yes, there were several questions by several different members of the group, by the various chairmen asking Mr. Carlisle these questions.

Q. Tell us about that. A. I believe they started out by Mr. Ganley, chairman of the New York Edison council. He objected very strenuously to Mr. Carlisle according Mr. Tracy that recognition. He said his council  
570 had realized that there was a bill proposed and that there was a bill being considered in Albany that would eliminate them as a union or representation plan and that they had already set up a committee, legislative committee, they called it, and they were supposed to formulate plans and draw up a constitution, and so forth, to create an independent organization within the then existing employee representation plan or, rather, out of the then existing employee representation plan that would be contributed to and supported by the employees of the New York Edison Company.

He said if Mr. Carlisle would withhold granting recognition to Mr. Tracy, that he would say that he was sure that the employees of the Consolidated would be only too



S. M. 74

glad to contribute to the support of an organization of their own.

Q. Up to this point, had there been submitted to the employees of the system the question as to whether or not the employees were desirous of becoming affiliated with the International Brotherhood of Electrical Workers? A. Never.

Q. Had there been any statement made by any of the officers of the company to the employees on that question, do you know? A. None that I know of.

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S. M. 75

Q. Had there been any such representation made to the men in so far as you know by representatives of the International Brotherhood of Electrical Workers?

Judge Ransom: I object. This is clearly outside of any issue that is tendered to the respondents in this complaint.

Trial Examiner Gates: You may answer.

Judge Ransom: **Exception.**

A. Not that I know of.

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Q. (By Mr. Moscovitz) Did you know of any other labor organization in the field at that time outside of your own organization? A. I knew of an organization that was attempting to unionize the Edison employees.

Q. What? A. The United Electrical and Radio, the C.I.O. affiliates.

Q. Do you know of any other? A. No, I do not.

Q. Will you tell us now whether or not any other protests or complaints were registered at this meeting by other general council members? A. Mr. Clausen, chairman of the Brooklyn General Council, got up and made a statement to the effect that there was a Voter's League, a political organization in existence among the employees

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*Harold Straub—For N.L.R.B.—Direct*

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of Brooklyn and if they were given an opportunity he knew that through this Voter's League that they, in turn, could form an organization that would represent the employees of the Brooklyn Edison and that they would be more than glad to support this union and contribute to it and so forth.

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Q. How long before this meeting had you learned of the electrical field so far as labor was concerned, of affiliates of the C.I.O.? A. About three weeks before that there was that information I gained through the newspapers and through the attempts on the part of different members of the C.I.O. to organize the employees of the Edison Company through the distribution of pamphlets and leaflets outside of the company buildings and making speeches and so forth.

Q. Between the time that you heard of the entry of the C.I.O. into the field and the time that this meeting was held, to which you now testify, you say that there had not been any submission of representation to the employees of the system? A. No, sir.

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Q. Did Mr. Carlisle at this meeting, give you the substance of a letter of recognition which he sent to Mr. Tracy? A. He did not. He only told us that he was sending the recognition or granting to Mr. Tracy the right to bargain for the employees of the Consolidated Edison Company.

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Q. Did Mr. Carlisle ask you gentlemen whether or not the men you represented were desirous of becoming members of any other labor organization? A. No, sir, he did not.

Q. Did Mr. Carlisle ask you gentlemen to take back back to your members or the employees of your group

the question of whether or not they were desirous of becoming affiliated with the I.B.E.W.U? A. That is a rather difficult question to answer. Mr. Patrick Kerry, chairman of the Brooklyn Company, specifically, point blank, asked Mr. Carlisle if we were supposed to bring back to the employees—however, if he was supposed to bring back to the employees of the company that he represented that they were supposed to join the I.B.E.W.U. and his answer was yes. There were several other talks made by different council chairmen. Mr. Drury of the United Electric Light and Power Company and of the Westchester got up and told Mr. Carlisle that he would like to inform him of an incident that had happened to the Westchester and to the Yonkers Company, in 1926—He said—

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Judge Ransom: I object to the witness bringing in anything that is as remote as that; any evidence of what he heard anyone else say. I do not see that that conversation which is as far back as 1926 would be relevant in this matter at all under any possible consideration. It is far too remote.

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Trial Examiner Gates: You may answer subject to a motion to strike.

Judge Ransom: Exception.

A. Mr. Drury stated that in 1926, the I.B.E.W. attempted to organize and did organize the lineman and the cable splicers and other men and their respective helpers of the Westchester Light and Power Company and of the Yonkers Light and Power Company and after belonging to this organization for several months, paying dues and also the required initiation fee that they presented, through this organization, certain definite de-

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*Harold Straub—For N.L.R.B.—Direct*

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mands on the management of the Westchester Light Company and the demands were refused and they were advised to go out on a strike and they did go out on a strike and after they were out on strike for about three days, they attempted to contact the people that were supposed to be handling the money for them. They found that these people had left town and he went on to add that as he understood it there were indictments in six or seven different places in Westchester County then against those people and he said that the people of Westchester and Yonkers had been robbed in this fashion, and they had had this matter rubbed into them pretty hard and he said, "I will have a damned tough time selling it to them all over again."

I, myself, asked Mr. Carlisle several questions. One of the questions I asked him—

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Judge Ransom: One moment. I want to clear up this matter first. I now move to strike this matter as too remote and not within the issues here in any possible charge of the complaint to which this matter relates.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

A. I asked Mr. Carlisle whether or not it was true that he had or was recognizing the bargaining agency for the 40,000 employees of the Consolidated Edison Company, an organization which had no membership among the employees of the Consolidated Edison Company.

Q. Mr. Carlisle answered that there were members of the I.B.E.W. among the employees of the Consolidated Edison Company and that while he had no way of knowing exactly how many members there were, that he could at least guarantee that before the following night there



would be many, many more members enrolled in the I.B.E.W.

As I recall it, Mr. George Parker then requested that the meeting be adjourned in so far as the management was concerned and that the members of the management leave the room and give various general councilmen an opportunity to talk the situation over and it was a surprise to them, adding particularly a request to Mr. Carlisle to withhold sending the letter to Mr. Tracy granting the I.B.E.W. recognition for the employees.

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Mr. Carlisle said that he would be at the disposal of this body at any time that they wanted to talk to him but that they could not agree to withhold the letter of recognition to Mr. Tracy.

We subsequently found out, when we went out to lunch, that the newspapers had the story in it at one o'clock, the early edition papers, that the recognition had been granted to the I.B.E.W. to represent the 40,000 employees of the Consolidated Edison Company.

Q. (By Mr. Moscovitz) Do you mean that recognition had been granted at the time you were in or before the meeting you had with Mr. Carlisle, that you have just testified about? A. Yes, it was obviously prior to this time because that letter must have already been sent, otherwise newspapers could not have come out and said that the Consolidated Edison Company had granted recognition to the American Federation of Electrical Workers.

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Judge Ransom: I object, and move to strike it out.

Trial Examiner Gates: It may stand.

Mr. Ransom: This is characteristic of the testimony, that he assumes that something must

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*Harold Straub—For N.L.R.B.—Direct*

be true which actually was not true and is perfectly susceptible to proof one way or the other in any event, and if your Honor wants to take his positive assertions or speculations about something where there is no possible way of the witness telling you the facts, that is one thing. The wit-

S. M. 81

ness could not know this.

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The Witness: I, personally, saw it in the early edition of the New York Evening Journal. I remember seeing that when I went out for lunch. I was accompanied by several other people who also saw it.

Q. (By Mr. Moscovitz) At this time did you have any further conversation with Mr. Carlisle regarding the I.B.E.W. or the C.I.O. or any other labor organization? A. Yes, sir, I did. I gathered from different statements and from the way Mr. Carlisle had been talking, I gathered a certain, definite impression in my mind and decided and did, in fact, ask Mr. Carlisle about it.

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I asked him if it were true that the management had not before this time considered all labor organizations as an unnecessary evil or evils and that at that time they had come to the conclusion that they were then a necessary evil and of the two evils he would prefer the employees to become associated with the I.B.E.W.

Mr. Carlisle's answer to me was "You have put it very aptly and very precisely, and that is very well said".

In addition to that, before the meeting adjourned, Mr. Carlisle made certain definite statements; that is, as plans were developed and brought up to his consideration for the formation of these independent organizations.

Mr. Carlisle stated that the people that were having

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these put through in Washington and in New York state were definitely labor organization people and that the administration of these laws by the various labor boards, in them the labor organizations would have a great deal to say about them and that undoubtedly they would be administered by boards that were favorable to labor organizations and the fact of the matter was he thought that the American Federation of Labor people would predominate in that, and would take a very active part in that set up.

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Q. And when this reference was made as to who was going to sit on the boards, was there a reference as between the I.B.E.W. or the American Federation of Labor and the C.I.O.? A. I cannot recall.

Q. When he spoke of the kind of men who would sit on the State Labor Boards, did he make any mention of from what organization or organizations those men would come? A. Oh, yes, he said definitely that these people would be selected from the ranks of the American Federation of Labor, that they would be the people sitting on the Labor Boards and administering these boards.

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Q. Did he make any further statement regarding these boards? A. Oh, yes, he said that if—let me see. I would like to recall this as exactly as I can—he said that these—an independent organization would be contrary to the existing laws and that they would not re-

S. M. 83

ceive much consideration from these existing labor boards, and that to sponsor or to recognize an independent organization would create the public opinion

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*Harold Straub—For N.L.R.B.—Direct*

that while they did not operate under the Wagner Act, that they were not even attempting to live up to the spirit of the law, and he added that the violation of the Wagner Act called for a fine of \$5,000 and one year in jail and he added with a smile that while he wasn't particularly interested in the \$5,000 fine, there wasn't any member of the management that would care to spend a year in jail.

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Of course, that got a big laugh and one of the fellows then injected himself into the picture. I just don't recall what one, and asked him whether or not it was true that while the management of the company were desirous of living up to the spirit of the law, they were not attempting to live up to the letter of the law in giving the employees the opportunity to select their own labor organization. I don't think there was any answer to that. At least, I don't recall hearing any.

Q. Did the meeting continue after that? A. I believe the members of the management then adjourned. They left the room and we, as a body, representing the 40,000 employees in the company continued the meeting.

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Q. What did you do in your meeting? A. Well, it was a joint meeting. We all stayed there. The only ones that left were the management of the company. The

S. M. 84

members of the management. And in all meetings there must be, in order to conduct a semblance of order, there must be a chairman appointed to these meetings and, as Mr. Parker and Mr. Ganley were acknowledged chairmen of the groups having the largest members, and, as Mr. Parker and Mr. Ganley had never gotten along, they had consistently refused to affiliate their representation plans, they were just about on speaking terms—we decided to elect temporarily Mr. Parker as co-chairman of



this particular meeting in order that there might be harmony or some order or, a definite idea gotten from the meeting.

Q: Tell us then what the purpose of the meeting was, what took place?

Judge Ransom: Objected to as incompetent, in no way binding on the respondent, not within any issue here. We have nearly an hour of testimony now on which you can find nothing in the complaint or charge. It relates to an organization concerning which no complaint is here made.

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Trial Examiner Gates: Overruled.

Judge Ransom: Exception.

A. After the members of the management left, different fellows got up and went into flowery orations as to the dirty deal the management had given them, that they had carried the banner for management for four years and that the management had not taken them into con-

S: M. 85

sideration in finding out what labor organization they wanted to be affiliated with. I, personally, resented very much being made a company stooge by the management distributing cards for the management to the employees, asking employees to sign cards stating they were desirous of having the present Employee Representation Plan as their sole bargaining body. I recall the cards given to us by the management of the company, at the same time that the C.I.O. announced through the newspaper their plans to organize the utility employees, and in my opinion these cards were given out to stave off the C.I.O. drive until such time as Mr. Carlisle and Mr. Stillwell could have time to organize the Edison Company employees. The meeting continued. There were various

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talks and discussions. Finally the consensus of opinion was that inasmuch as the Doyle-Newstein Bill had not gone into effect, and inasmuch as we were told we did not operate under the Wagner Act, there would be nothing at all to prevent us as various council chairmen, from presenting our various chairmen with expense accounts, varying different sums from 100 to 1,000 dollars, if necessary, in order to get the necessary amount of money to start an independent organization for the employees of the Consolidated Edison Company. There was no definite move made on that, as I understand.

Q. (By Mr. Moscovitz) These cards that you referred to immediately before the last statement as a card cir-

S. M. 86

culated among employees so that they might indicate whether or not they wanted the present employee representation plan to be continued, who gave them to you?

A. I received the cards that I had and I had approximately 500 of them. From Mr. George Parker, the Chairman of the Consolidated Gas Company general council, that is who I received them from. I had arrangements made with a Mr. Sargeant, assistant personnel director of the Consolidated Edison Company, to get these cards from him. I had gone down and spoken to him the particular afternoon that these cards were involved, but unfortunately they had not arrived from printers at that time, and after spending a great deal of time in Mr. Sargeant's office waiting for them, he decided that when they arrived he would send them up to Mr. Parker and I could get these cards from Mr. Parker which I did.

Q. Did you then circulate them? A. I did.

Q. And you got their signatures? A. I did.

Q. This too was during your regular working hours?

A. Yes.

Q. Is this the card to which you referred, or is that a sample of the card which you distributed? A. This is evidently the same card. I have about 300 more of them.

S. M. 87

Q. And did the other representatives get similar cards? A. Yes they did.

Q. Do you know whether or not they distributed them? A. Oh yes, very definitely.

Q. And did the employees then return the cards to you? A. Signed, yes.

Q. What did you do with them after they returned them? A. I kept the ones I had signed, but I was supposed to send not the cards themselves, but a report back to the management of the company, telling them the percentage of employees or the number of employees that were desirous of retaining the Employee Representation Plan as their sole bargaining body.

Q. Who was the management representative that you were supposed to submit this report to? A. Colonel John Stillwell, vice president in charge of employee relations.

Q. Did you submit such a report? A. I did not have a chance to.

Q. Why not? A. By the time the men finished signing these cards, this meeting was called and we were told that we were practically no longer an existing body; there was no necessity for them.

Q. And you say these cards were given to you how

S. M. 88

soon after the C.I.O. came into being? A. Oh, within a few days.

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*Harold Straub—For N.L.R.B.—Director*

Q. And immediately after the distribution of these cards, before you made up your report you said this meeting with Mr. Carlisle took place? A. Yes.

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Q. Would you mind reading into the record the printed language on the card which you say was circulated? A. "To the employees Representation Plan: I wish to hereby express my desire that the present Employee Representation Plan be continued for dealing on all matters with the company and I wish to be solely represented by such plan". There is a line for the person's name. A following line to signify what company you belong to and another line for the department, another for the Bureau and another for the location.

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Q. Was there anything further that took place at this meeting or did the men adjourn, this is the meeting of the general council members themselves? A. It adjourned by reason of another meeting. It seems that at the time that we were meeting with Mr. Carlisle the general council of the New York Edison Company—incidentally they had then named themselves the general council of the Consolidated Edison Company of New York. In addition to that, the former Consolidated Gas Company council had also taken that same name. This

S. M. 89

general council of the Consolidated Edison Company—by that, I mean the former New York Edison Company council,—were holding a meeting that same day and Mr. Ganley was very anxious to get back down to his counsel and explain what had happened and what we had, as a group of employees, decided to do, and he invited us to attend that meeting, and the greater portion of the employees present did attend the meeting with Mr. Ganley and his council. That was also held in the company building at 14th Street.



Q. Did you attend? A. I did.

Q. How many representatives were there? A. The entire general council of the New York Edison Company were present, approximately 25 or 23 men, I don't know the exact number. Some were incidentally council members.

Q. Who were they, do you remember? A. I don't recall their names.

Q. Any representative of management? A. No.

Q. What was the topic at that meeting?

Judge Ransom: Objected to as immaterial, wholly outside the issues here, in no way binding on the respondents.

Trial Examiner Gates: Overruled.

Judge Ransom: Exception.

A. The topic of the meeting was the obvious deal the

S. M. 90

employees had received from the management of the company. Several people reiterated their stand that they had been carrying the banner for the management of the company for so many years, that the management had been unfair to them in recognizing any organization without first having consulted or talked to them about it, and there was again definite statements made that the various general council chairmen who represent the men who were present, should present to the management of the company requests for expense accounts, their own specific expense accounts, to have them get a certain amount of money to set up an independent organization among the employees of the different companies.

Q. Now, was there anything further at that meeting?

A. Nothing of any importance.

Q. Did you see any of the representatives of man-

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*Harold Straub—For N.L.R.B.—Direct*

agement that same day outside of the regular meeting?

A. Yes-I did.

Q. Whom? A. Colonel John Stillwell.

Q. How did you happen to see him? A. At the meeting with Mr. Carlisle, Colonel Stillwell was the man I had been carrying on negotiations with from the group formerly known as the Bronx Gas and Electric Company. I spoke to him before he left the Board room that day, and told him that I would like to see him that

611 S. M. 91

afternoon and he told me that he would be glad to see me, that I should come up, call up his office first and then come up and see him any time during the afternoon, which I did.

I called his secretary and she told me to come up, and I did, and I went in and had a talk with Mr. Stillwell. Should I relate that?

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Q. Yes. Tell us what took place. A. One of the first things that I said to Mr. Stillwell was that I would like him to see to it that the necessary wheels were set in motion to have me transferred out of the particular department I was working in, and he wanted to know why, and I told him that through my activities as a general council chairman I had succeeded in antagonizing some of the various heads of that department and that I was sure they were only waiting for the opportunity to make me realize it and that now the general council no longer existed and that these people would have their opportunity and he laughed it off as being ridiculous and said there wasn't anyone that small in the Edison Company and so forth, and we had a discussion about the I.B.E.W. and we talked about the independent manner in which the Bronx group had attempted to remain by refusing to affiliate themselves with any of

the other existing councils at that time, and I wondered, to him, whether or not it would be possible if we had to go into the I.B.E.W. to get a charter from the I.B.E.W.

S. M. 92.

that would cover all of the linemen and all of the men in the overhead construction departments in the entire system and I added that inasmuch as the American Federation of Labor was an organization on craft lines, that I did not think that that would be very hard to do and I wondered how I could get in touch with these people, and he told me that he had their address, and he removed from his pocket a book, and he gave me the name of a gentleman up at the Hotel Roosevelt that I should go up and have a talk with. He didn't know how to pronounce the man's name. He spelt the name. The name was Bonizat, or something of that sort and he spelt it out and just prior to him spelling the name, we had been discussing American's, American ideals and American principles and when he spelt the name to me and I wrote it down it sounded rather funny to me, and I said that that didn't sound very American to me, and he said you couldn't judge too much from a person's name and I said I wasn't attempting to judge the man, it was just in my thoughts, and he gave me the name of this Mr. Bonizat at the Hotel Roosevelt and told me if I got in touch with him and went up to see him and had a talk with him he would be sure that this man would be more than glad to explain the whole situation and the whole set up and what we could do and what we couldn't do.

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Q. Now, before that, was there any discussion with him about the A.F.ofL., and the C.I.O., the policy of the

S. M. 93

company in regard to the two? A. Oh, yes, there was a very definite discussion.

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*Harold Straub—For N.L.R.B.—Direct*

Q. What was your discussion with him on that point?

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A. He talked about the C.I.O. and about the A.F.ofL. and I asked him, I wondered why it was that the management of the company had taken the step that they did take and Colonel Stillwell said that he personally did not think it was a good idea and that he had not been so very strong for it but there had been other people there and more people for it than he was and he thought the best thing to do was to go along with the step the management had taken, that it was for the best interests of the employees of the Consolidated Edison Company, and we discussed the C.I.O. and the supposedly political affiliations, et cetera, and he said that where the steps that they were taking differed from the attitude and the action taken by other industries throughout the United States, he said that wherever industries had made their mistakes, that they had refused to confer with either the C.I.O. or the A.F.ofL., and according recognition to the A.F.ofL. would be a feather in the cap of the A.F.ofL., and that if other industries had followed in the move that they made, that it would be the definite wind-up in the smash of the C.I.O.

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Q. And was it after that that he gave you the name of the man that you were to see at the Hotel Roosevelt?

A. Yes.

Q. Were you to see him regarding the I.B.E.W.? A. That's right.

Q. And did he tell you, did he give you any further instructions about what you were to inquire into at the time you saw this man? A. No, he didn't instruct me as to what I was to inquire into. He gave me the man's name and told me where he was and advised me to go up there and see him and assured me that, told me, the



viewpoint I should take of it, that the 40,000 employees of any local of any labor organization, that those people could rewrite the constitution of that organization; they could dominate it and control it, that they would have enough voice in there to practically run that organization. And, frankly and honestly, he sold it to me at that time. I thought it was a good idea.

Q. You thought what was a good idea? A. That we could get in as a group, in one organization, one local of any labor organization and by the mere fact of having so many employees in it, if there was anything in there that we did not like, that we thought was not good for the men, we should change that, we would have a voice large enough to have a definite say in the running of that

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local or that organization, and for that reason I thought association with the I.B.E.W. would be a good thing.

Q. I see. And was it your understanding at that time that an association with the I.B.E.W. would be one in which you had one large local for the 40,000 employees? A. Absolutely.

Q. Was that statement made to you by Col. Stillwell? A. Col. Stillwell did not specifically state that there would be one local for all the employees. He did say that 40,000 employees in any one labor organization could rewrite the constitution, and so forth.

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Q. Did you then go to see this gentleman at the Hotel Roosevelt? A. No. I went to see a Mr. George Parker, chairman of the former Gas Company Council, at his office in the company building at 14th Street. I talked to him about different things, different subjects, and we spoke for a few minutes, and he said to me, "Come on outside, I want to talk to you."

Q. What is George Parker's regular job with the company? A. Chairman of the regular council, or was.

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Q. Is that all he is? A. For as long as he had been chairman of the council, that was all he did.

Q. No other kind of work? A. None that I know of.

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Q. Had a regular office and desk? A. Yes, secretary and files and so forth.

Q. And spent his time on this employee representation plan? A. Yes, all of his time.

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Q. And Mr. Drury, did he have the same kind of job? A. No, you see, the Yonkers and Westchester County groups did not have as large an employee personnel in them as the Edison Company and the Gas Company, therefore they didn't feel it advisable that they should devote all of their time to employee representation, but there was no limit to the amount of time they could spend on it, but they had no definite office.

Q. This Mr. Drury that you mentioned before as having protested with Mr. Carlisle against the men going into the I.B.E.W. Is he still employed by the company? A. No.

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Q. What is he doing now? A. He is the business manager of the Yonkers and Westchester local of the I.B.E.W.

Q. Do you know when it was that he became business manager? A. I don't know the exact date.

Q. Was it very long after his protest against the I.B.E.W.? A. No, I understand not. I was given to believe it was a very short time after.

Q. Do you know whether or not it was a short time

S. M. 97

after? A. Yes, it was a very short time.

Q. Now, when you went into Mr. Parker's office, what was the conversation you had with him?

Judge Ransom: Objected to as incompetent. I object to this whole line of testimony. Obviously, anything said by the chairman of this general council or that general council of another company can be in no way binding on the respondents.

Trial Examiner Gates: He may answer.

Judge Ransom: Exception.

A. It was not very important, but, as I said, Mr. Parker called me outside of his office and we walked a few feet from the door and he said to me, "Have you seen the Colonel?" meaning Colonel Stillwell. And I said yes, and he said, "Did he give you any one's name?" And I said yes, and he said, "Whose name did he give you?" And I said "Mr. Bonziat in the Hotel Roosevelt." And he said, "Oh, hell, he is not there any more. I just called him up. I talked to a different man."

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I said, "To whom did you talk?" And he said, "Mr. Beretz, room 1621 at the Hotel Roosevelt. He is taking Mr. Bonizat's place."

Q. (By Mr. Moscovitz) Who is Mr. Beretz? A. Assistant to the International President of the I.B.E.W.

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Q. Continue. A. I got his address, as I said, I decided that that was about enough for that day, and went on home.

Q. Did you finally go to see Mr. Beretz? A. I did, the following day.

Q. Do you recall the date? A. Yes, that was Wednesday, April 21st, Wednesday morning, April 21st, the day after Mr. Carlisle had made his statement to us.

Q. That was 1937? A. That's right.

Q. Tell us what took place when you went to see Mr. Beretz. A. Well, I first called up Mr. Beretz over the

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phone and told him I was the chairman, or had been the chairman of the general council in the Bronx and that I would like to get in touch with him, that I understood he represented the I.B.E.W., and he said yes he did, and that I should come down and see him, and we made a tentative appointment for ten o'clock that morning and in talking around among the different other employees, stopped me and wanted to know what it was all about and so forth and so on, I was a little late for the appointment, and when I got to the subway I called him again and I said I would be a little late and he said that was all right, to come on down to see him anyway.

Finally, I got down to see him and I called him up

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from the lobby and I had to wait a few minutes and I then went up to see Mr. Beretz.

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One of the page boys paged me in the lobby, and I saw him, and when I got in I asked if he represented the I.B.E.W. and he said he did, and I asked him if he would be offended if I would ask him to prove that he did; that after all, anybody could tell me they represented the I.B.E.W., and I didn't know who he was, so he said to me, "You have me in a tough spot. I don't happen to have any credentials, but," he said, "maybe this will show you that I do represent the I.B.E.W.," and he reached over to the top of his bureau and he had quite a large stack of application cards, pledge cards in the I.B.E.W., and he showed me those and he said, "How are these?" So I said they weren't so good, that in my opinion any one could get those, too. So he opened his dresser drawer and brought out a blue bound document, and he said, "How is this?" And he opened it and on the top it had "agreement Consolidated Edison Company of New York, Inc., between the International Brotherhood of Electrical Workers of America."



So I said to him that is all right, so he closed it and put it back in the drawer and we began to discuss the things I had come down to discuss with him.

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Q. What was your discussion? A. I went down there primarily to find out what effect enrollment in the I.B.E.W. would have on the employees of, particularly the former Bronx Gas & Electric Company. There were certain definite benefits that we were receiving, and I wanted to know whether or not we would continue to retain those benefits if we joined the I.B.E.W.

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For example, we received vacations with pay. I wanted to know if we would retain that vacation with pay. We had certain definite sick benefits. We have insurance that we carry and so forth, that are and were considered by the employees an advantage to them, and I was trying to find out for the employees that I represented whether or not they would retain those benefits.

Mr. Beretz informed me that the prime purpose of a labor organization was the protection of the members of a labor organization. He told me that labor organizations were dependent entirely upon their membership and that they would continue to represent them only for as long as they done a good job for them. It was raining that day and, as I am a lineman, naturally particularly interested in linemen. We do not, or we had not, up until that time, been working in the rainy weather, or when it rained. We would stand by for emergency work. The nature of the work we do is rather hazardous. It is not very easy for a lineman to work on 3,000 or 2,200

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volt lines in the rain, and the management of the company realized that and they had not asked us to work

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in the rain. We did stand by for emergency work, and emergency work that came up, whatever it was, whether it was raining or not, we did that and we did it gladly. I mentioned that to Mr. Beretz. I brought out the fact that while we did not actually work when it rained, we would get paid for it by the management of the company by virtue of our standing by, and we wanted to know if the I.B.E.W. would guarantee that to us, inasmuch as that comprised quite a great deal of our years of time, and he didn't give me any definite answer.

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He told me he could assure me that the union would take up where we as employee representatives had left off. And I left Mr. Beretz and went back to the company where I had been employed.

Q. Did you attend any other meetings that day regarding the same question? A. Yes, I did.

Q. Where? A. At the premises of 161 Brady St.

Q. What is that place? A. That is the place known as the Linemen's Recreation Room of the former Bronx Gas & Electric Company. It is a place where all the meetings between the linemen and their elected representatives in the employee representation plan met. It

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was the place where they stayed when it rained and so forth and so on.

Q. Is that a big property owned by the company?

A. Oh, yes.

Q. Was there a meeting in progress there? A. No, I called that meeting.

Q. Of whom? A. Of all the linemen and their helpers and chauffeurs in that company.

Q. How many men attended? A. Over 50.

Q. Through whom did you arrange for the calling of that meeting? A. With the supervisor of that de-

partment. Incidentally, the meeting was called after working hours.

Q. I see. And how did you arrange for the meeting to be called? A. I spoke to the supervisor and he made the necessary arrangements. I believe arrangements are—

Q. Who was the supervisor? A. Mr. John Diner.

Q. Yes. A. There is a man at 41st Street and First Avenue, a company employee, by the name of Mr. Edward Haywood. He is the man that foremen of our side

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gangs such as linemen, call up periodically during the day to receive instructions as to where to go to work and what to do, and if there is any certain job that they should take care of right away. He is the man that these foremen are calling up during the day and there is no other way that any one can get in touch with these linemen only through this Mr. Haywood, and Mr. Diner evidently got in touch with Mr. Haywood because the meeting was called for five o'clock that evening and all of the linemen attended.

Q. What took place at the meeting?

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Judge Ransom: This is highly incompetent, in no way binding on the respondents. How can evidence of this sort be made against the respondents, by what took place at a meeting of employees?

Trial Examiner Gates: He may answer.

Judge Ransom: Exception.

A. We discussed the American Federation of Labor and the C.I.O. There were fellows there that thought they should have the right to choose their own organization and they said that it seemed to them that the C.I.O. had

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been grabbing all the headlines; they had been doing the best and the biggest job for the various employees in the various industries, and they thought they should have the right to select whatever organization they wanted to join. At that particular time I was still of

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the opinion that the I.B.E.W. had to do a good job for the employees. I was keeping in mind the fact that we would be, as I thought, in one local, 40,000 employees in one local, dealing directly with the management of the company instead of as we had been doing in the employee representation plan, having at least seven different employee representation plans and we had seven different managements to contend with, and the acknowledged head of the company was Mr. Carlisle of the Board of Directors, and I was in hopes that through the I.B.E.W. we could get into one local instead of seven different managements, and all of these points were discussed at that meeting, and I finally wound up, during

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the course of the meeting, I told the fellows that I would not advise them to join any labor organization, any one whatever, whether it be the C.I.O. or the A.F.ofL., or the I.B.E.W., or any other organization, unless they could first get a copy of the constitution and by-laws of that organization and read it, familiarize themselves with it, and know just what type of organization they were joining, and when I said that one of the fellows jumped up and said he wanted to know why it was that the employees had been called down that day into the office of Mr. E. E. Hill, assistant general superintendent of the overhead construction department at 41st Street, and had been coerced and intimidated into signing I.B.E.W. pledge cards.



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Judge Ransom: I move to strike out the answer as highly incompetent and improper, in no way binding upon the respondents. Evidence of that sort cannot be made pertinent against the respondents as something said by some one in a meeting of employees. That is no evidence of any action on the part of Mr. Hill or any one authorized on the part of the company.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

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Q. (By Mr. Moscovitz) Who was the employee that made that statement? A. A man by the name of Felix O'Donnell, a lineman. There are other employees that heard this statement made.

Q. Who were the other employees? A. Mr. Luther Grove; Mr. Phil Blackledge; Mr. Henry Lang; Mr. William Lamertz; Mr. Harry Pierson. They are a few of the ones that heard the statement made.

Q. When you say they heard the statement made, are you referring to the statement that was made by Felix O'Donnell? A. That's right.

Q. What else was said at that meeting? A. Not very much of any importance.

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Q. Any further statements made regarding Mr. Hill? A. No, the only statement what was made was, as I said, that the people wanted to know why they should be

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brought down to Mr. Hill's office and why they had been told they had to sign the I.B.E.W. cards and that they had to join the I.B.E.W.

Q. Had there been up to this point any submission by the management or the I.B.E.W., so far as you know,

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of a constitution or a by-law of the organization for the employees to read? A. No, sir, there was not, not that I know of. We tried very hard to get those constitutions and we just couldn't get them.

Q. From whom did you attempt to procure these constitutions? A. Well, at that time, while I was talking to Mr. Beretz, I asked him if he had a copy of the constitution with him, then, that I could have, and he told me unfortunately that at that time he did not have any with them and therefore he could not give them to me and we had made other attempts through different people whom we thought might have them, and we did not get them.

I finally succeeded in getting one of those copies after a length of time had elapsed.

Q. Did the meeting then adjourn? A. Yes.

Q. And was there another meeting? A. Yes, the following day.

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Q. Where? A. 14th St. and Irving Place in the company building, in the auditorium.

Q. Who called that meeting? A. Mr. Ganley.

648 Q. Does Mr. Ganley also have a position like that held by Mr. Parker? A. Identically the same.

Q. Does he have an office in the company building and a desk and a secretary? A. At that time, yes.

Q. Did he spend all of his time at that time as Mr. Parker did in employee representation plan work? A. Yes.

Q. Do you know at whose suggestion Mr. Ganley called this meeting? A. At the suggestion of the employees, at the suggestion of his own council.

Q. What was the purpose of the meeting? A. The purpose of the meeting was to formulate plans whereby they could form their own organization.

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Q. How many employees attended this meeting? A. Approximately 400.

Q. And from what companies? A. All of the various companies. There was no—the only price of admission

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was membership in the company. I mean by that your company identification card.

Q. Were these employees generally, or simply representatives of the employee representation plans? A. The greater majority of them were employee representatives of the employee representation plan. I think there was a few ordinary employees off the shift in there, but the biggest majority of them were employee representatives and members of the general councils.

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Q. Was the meeting held after working hours? A. Oh, no.

Q. During working hours? A. No, that was ten o'clock in the morning.

Q. Who presided at the meeting? A. Mr. William P. Ganley.

Q. Do you know with whom he made the arrangements for the men to attend this meeting?

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Judge Ransom: : Objected to. This witness cannot testify to that.

Trial Examiner Gates: He can answer if he knows.

A. There were no arrangements needed to be made. Any bureau or general council representative could at any time attend any meeting called by any head of his particular council. The only thing necessary was to inform the man that he might be working for at that time that he was going to a meeting. He did not have to tell him when, where, how or why.

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Q. What took place at this meeting? A. There was a lot of discussion pro and con about the formation of different organizations. There were people there definitely advocating the C.I.O. There are other people on the part of the I.B.E.W. and there were other representatives who believed that the employees should have a right to form their own organization if they so desired.

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Q. Did Mr. Ganley preside? A. Yes. During the meeting there was a motion made that the employees be polled, that a vote be taken among the employees of the Consolidated System and that a ballot be drawn up, a secret ballot, and that each employee be given the opportunity to vote on this ballot. The ballot would have the name of three organizations; would have the name of the I.B.E.W., or the International Brotherhood of Electrical Workers affiliated with the A.F.ofL. above the name of the United Electrical & Radio Workers of America affiliated with the C.I.O., and it would have a space on there for them to signify whether they wished to belong to an independent organization of their own and it would have further spaces on there to say whether they wanted to belong to any union at all.

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That motion was made and carried.

Q. Anything done about it? A. No.

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Q. Why not? A. That particular meeting was adjourned.

Q. Until when? A. Until three o'clock in the afternoon.

Q. What happened then? A. Well, they reconvened in a different location. It seemed that somebody else wanted to use the auditorium and they had to reconvene in the South Cafeteria on the 19th floor, No. 14 Irving



Place, and Mr. Ganley incidentally also presided over that meeting and at that meeting he read a letter that had been addressed to him by Mr. Tracy, the International president of the I.B.E.W., making them a proposition, of showing them how they could join the I.B.E.W. and still retain their present set-up as company unions. I mean by that, that they could retain their present employees personnel and these different general councils. They would have the same presidents and the same officers, but all they would have to do was to go over to the I.B.E.W. and he also read a letter from Mr. Martin Wertzing, president of the United Electrical & Radio Workers of America. I don't recall the exact wording, but he realized their desire to retain pure local autonomy, and this was being done in order to use up time until Mr. Carlisle could attend this meeting. They had asked Mr. Carlisle to attend this meeting on the 19th floor.

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Q. You mean this discussion pro and con of the C.I.O. and the A.F.ofL. was using up such time until Mr. Carlisle got there? How do you know that that was the situation? A. It was evident, because they kept looking at their watches and wondering what time Mr. Carlisle would be free and finally Mr. Ganley appointed a committee to go up and get Mr. Carlisle.

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Judge Ransom: I object to that.

Q. (By Mr. Moscovitz) Did the employees know that Carlisle was to attend this meeting?

Trial Examiner Gates: It may stand.

A. The understanding was that an attempt would be made to get Mr. Carlisle to attend it. At that time nobody knew that he would accept, but they all knew that

he was being asked to attend the meeting and he naturally did.

Q. When did he come? A. Mr. Ganley appointed a committee. I can remember their names, Mr. Krukell, Mr. Johnson and a Mr. Joy, were assigned as the committee to go up and get Mr. Carlisle, as Mr. Ganley put it, and bring him down to the meeting, and they did, and Mr. Carlisle arrived at the meeting and they started in asking him a lot of questions, why the employees, why the management of the company had recognized the I.B.E.W. for the employees, and all questions practically the same, why, why, why. The whole thing was why he

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had done this and finally Mr. Ganley decided that inasmuch as all of the questions were practically alike, that they have a prepared list of questions that they could ask Mr. Carlisle, and if he would answer them it would be all right. I remember some of those questions, not all of them.

Q. What were they? A. One of the questions that were asked was whether or not the management would allow this vote to be taken that I had mentioned. Mr. Carlisle said that the management could not possibly pay for it. He wanted to know if the management would be expected to pay for the taking of this poll, and he said that the management couldn't possibly pay for it. He pointed out that they weren't living up to the spirit of the law if they would pay or finance a poll that would be taken on the employees to see what organization they wanted to belong to.

Another that was asked Mr. Carlisle by Mr. Ganley was, would he stop the various department heads from intimidating and coercing the employees of the entire system from joining the I.B.E.W. and Mr. Carlisle said

that he wouldn't start anything, that he never issued an order that would start that, therefore he could not issue an order that would stop it, and Mr. Ganley insisted he said, "You know what is going on," and he said, "No, I don't know what is going on and I cannot issue an

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order stopping something that I did not start in the first place."

They then asked him why the organizers for the I.B.E.W. were allowed in the building, why the various department heads were assuming the position of organizers for the I.B.E.W. and the organizers from the C.I.O. were kept out or were being thrown out of the building as fast as any one knew who they were and Mr. Carlisle said they were not then and had never considered policing their building, and as far as he knew, anybody could come in, and what they said to the employees was one of his concern.

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Q. Did Mr. Carlisle point out, or did any of the employees point out that such an impartial election could have been conducted without expense to either side by the National Labor Relations Board in the interests of avoiding any possible labor dispute?

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Judge Ransom: Objected to as incompetent and not within any issues of this proceeding.

Trial Examiner Gates: You may answer.

Judge Ransom: Exception.

A. No, and pointed out—

Q. Does that end the line of questions and answers as you recall them? A. It ends the prepared questions and answers, but nevertheless there were questions that continued. Several different people insisted on jumping up

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and asking Mr. Carlisle questions. One gentleman got up and made a definite statement to Mr. Carlisle. He told Mr. Carlisle that in his opinion he, Mr. Carlisle, had sold the 40,000 employees of the Consolidated Edison Company down the river and got a tumultuous ovation, and everybody jumped up and applauded and waved their arms and thought that that was swell and the questions continued along those lines until a gentleman got up and said that inasmuch as the questions were all alike, that he thought it might be well if they excused Mr. Carlisle, which they did, and this committee went back with him to his office, I presume, and the meeting wound up by Mr. Ganley saying, "I will now adjourn the meeting and I want all of the council members to meet me in my office in room 1237, and we will form an independent union."

That is how the meeting broke up, and that is how the meeting adjourned.

Trial Examiner Gates: We will take a five-minute recess.

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(Whereupon, a short recess was taken.)

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**AFTER RECESS**

Q. (By Mr. Moscovitz) Mr. Straub, just before we recessed, you told us that Mr. Ganley had stated that a meeting should be held immediately for the purposes of establishing independent organization? A. That is right.

Q. Was this meeting held? A. Not that I know of.

Judge Ransom: You mean you do not know?

The Witness: What is that?



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Judge Ransom: Do you know whether there was or not?

The Witness: There was no meeting held that I know of.

Q. (By Mr. Moscovitz) Did you call any meeting of any nature? A. I attempted to call a meeting.

Q. When? A. That day.

Q. How? A. I got in touch with a man by the name of—a man up on Brady Street.

Q. Mr. Heywood? A. No, Mr. Dinan.

Q. What was the purpose of the meeting, that you were to call? A. The reason for calling the meeting—I called Mr. Dinan to find out and asked him if he would hold my pay for me that day to the next day. I found out that there were I.B.E.W. cards being distributed

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among the employees of the former Bronx Gas Company by the supervisors and heads of departments of that company. I called to try to get those fellows together and advised them not to join any organization and to tell them just what had taken place at the meetings that were being held that day.

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Judge Ransom: I move to strike out the answer. It is in no way associated with the interests which are being taken up here; with the issues which are before us, or possibly could be before us in the complaint.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

A. I left the building at 14th Street as the meeting of Mr. Ganley's group—bear in mind, I was not a member of Mr. Ganley's council. Therefore, I had no right whatever to attend any meeting called by Mr. Ganley.

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Consequently, Mr. Ganley simply invited me to attend that meeting. I was chairman of a council that had retained its independence and its individuality and had not affiliated with any of the other existing councils.

I went back over to Brady Street as fast as I possibly could, thinking I was going to attend a meeting of the linemen that I had met with the previous night. When I got there I found out that the meeting had not been called, that a man by the name of Mr. Heywood, a man whose responsibility was the mechanics of calling

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the meeting and notifying these different foremen when they called up over the phone that there was a meeting to be held that night, as he had done the previous night, had not notified any of the foremen, and that they had not, in turn, notified the linemen working for them that there was a meeting that night.

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However, I did meet some of the linemen as they were coming in on their trucks from work and some of them told me that supervisors—or at least that Mr. Thomas Courtney had been going around that day with I.B.E.W. pledge cards visiting gang after gang and man after man, going from one gang to the other between the hours of one o'clock and five o'clock and using a company car, and calling the men, the linemen, over to that car, individually, and telling them that they had to sign up the I.B.E.W. cards. He argued with them, telling them that if they did not sign up, that they would find themselves left out in the cold.

I have men that definitely have told me that and that have given me definite statements of a transaction that has happened as I have related it.

Q. Do you have men who also signed cards under those circumstances? A. They all signed the cards.

They felt as though they had to sign the cards in order to keep their jobs with the Consolidated Edison Company.

Judge Ransom: I move to strike out the wit-

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ness' statement as a voluntary statement, purely hearsay and wholly unfounded on fact. How could he possibly know how the men felt.

Trial Examiner Gates: Did they tell you that or not?

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The Witness: They certainly did, yes, sir.

Trial Examiner Gates: It may stand.

Q. (By Mr. Moscovitz) Are these cards that I now show you I.B.E.W. cards and signed by these men? A. Yes sir they are, yes sir.

Q. Is the last card here signed by a Miss Mildred— A. This one here?

Q. Yes. A. Oh, Miss Mildred, she is an employee of the Consolidated Edison Company, an employee at No. 43 Webster, I believe it is, although I would like to check on that, but anyhow she is the secretary of Mr. Patterson, on Mr. Peterson, manager of the Commercial Relations of the former Bronx Gas and Electric Company. She has some official job in the Bronx Gas and Electric Company and—that is, he has, and that girl is his secretary.

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Judge Ransom: I could not hear that answer very well because it was so low I could hardly make it out.

Trial Examiner Gates: Speak a little louder please.

Q. (By Mr. Moscovitz) How did you happen to have this card? A. Well, I collected \$1.50 from her for her

*Harold Straub—For N.L.R.B.—Direct*

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initiation fee in the I.B.E.W., on company time, on company property, and in a company building.

Subsequent events showed that Mr. Ganley came to the conclusion, evidently, at a later date, that I was not being active enough in collecting these initiation fees and he got different people in the Bronx that I was supposed to bring into the I.B.E.W., to check up on me, and then he sent a man around—he sent a man up to go around with me.

Judge Ransom: I move that that be stricken out as purely this witness' conclusion as to the workings of another man's mind and by no possible assumption can it be taken as evidence of anything.

Q. (By Mr. Moscovitz) What did he say to you; did he say that? A. Well, I—

Judge Ransom: Just one moment please. I still have my objection and I think it is a proper one to make at this time. I move to strike out this witness' speculations as to what he thought that Mr. Ganley thought. I submit that it is not proper to make a guess this way, of any fact which should be proved by the usual rules of evidence and that it is certainly not proper to make out a case in this manner.

The Witness: If he wants to make an assumption in that regard, he should make it by way of an argument in behalf of his position and in the event he does he should be down here and not on the witness stand.



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In any event he has been allowed great latitude in saying what he thought that he thought and he certainly is not entitled to say what someone else thought. Therefore, I move to strike.

Trial Examiner Gates: Did Mr. Ganley make any such statement to you?

The Witness: Mr. Ganley, at his office, told me specifically that he had heard that I was doing a bad job and that I was going around talking for the C.I.O. and I was not talking for the I.B.E.W. of the A.F.O.F.L., and he thought that I should turn over a new leaf and get wise to myself and get these cards and go out and collect the money for these dues and bring them into the office.

680

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) How did you happen to circulate these cards and collect initiation fees from employees? A. I, unfortunately, am a charter member of Local B-829 of the I.B.E.W., but I do not consider myself now a member of the organization.

Q. When did you become a charter member? A. The day after this meeting that was held on Friday.

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Q. The meeting that was held with your linemen? A. The day after we were supposed to have a meeting with the linemen. The day after the meeting with Mr. Car-

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lisle and so forth and so on.

Q. Yes. When you were supposed to have a meeting with the linemen, you say they did not respond to the call, or the call was not put in for them to respond to?

A. That is correct.

*Harold Straub—For N.L.R.B.—Direct*

Q. You spoke with some of them as they came in from their work? A. Yes.

Q. What was the conversation you had with them when they came in from work? A. They told me—

Judge Ransom: I object to what he said to them, as in no way proper testimony in this case. I object to it on the further ground that what he said to them is in no way binding upon this respondent herein.

How could it possibly be that what he said to some unidentified man is binding upon these respondents? You cannot make evidence in a quasi-judicial tribunal in any such manner as this.

Trial Examiner Gates: Objection overruled. If he gives the names and the conversations with them, it will be admissible.

Judge Ransom: My objection is that there was no representative of the company present. My further objection is that this is not in any way

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probative or binding upon the respondents. You cannot create evidence by merely having one employee say to another employee certain things under certain circumstances which give rise to no pre-sumption of estoppel or admission by conduct or otherwise on the part of the respondents.

Trial Examiner Gates: Overruled.

Judge Ransom: Exception.

A. These employees told me that they had not been informed that there was a meeting taking place that night, as on the previous day they had been notified of a meeting.

Q. (By Mr. Moscovitz) Who were these employees?

*Harold Straub—For N.L.R.B.—Direct*

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A. An individual by the name of Blackridge,—no, that was a Mr. Henry Lang, a Mr. John Walsh, a Mr. Henry Spoker, a Mr. Frank Gould, independently of any call, went up there with me expecting to attend this meeting.

They told me that Mr. Thomas Courtney—no, that is wrong—Henry Gould did not tell me but these other three fellows told myself and Mr. Gould that Mr. Tom Courtney had been around that afternoon telling them that they had to join the I.B.E.W. and if they were wise and smart and knew what to do, they would join the I.B.E.W. or they would be left out in the cold.

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Q. What is Mr. Courtney's job? A. Oh, he is—since the merger of the various companies, I understand that all titles of various supervisors and department heads have been removed—their titles have been removed and

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he was acting in the capacity at that time of Assistant General Superintendent of the overhead construction department of the Bronx.

Judge Ransom: What was his title?

May we have his title instead of this witness' characterization of what it was?

687

Q. (By Mr. Moscovitz) Do you know what his title is or was? A. He had no title. There was no man up there that had any title, any of the boys, any of the supervisors, their titles had been removed with the merger. They were waiting to be assigned new titles.

Trial Examiner Gates: Can you give us his title prior to the merger?

The Witness: He was the general superintendent of overhead construction in the West Bronx.

*Harold Straub—For N.L.R.B.—Direct*

After the merger there these two overhead construction departments were combined with one location at 155 Bridge Street, and the man who acted as the electrical engineer of the Bronx—the former Bronx Gas and Electric Company in charge of that work was put in charge of the overhead construction department for that company or rather all of us in the West Bronx group, and this man that had been in charge—that had been in charge of the West Bronx group alone was acting as his assistant at that time.

Q. What else took place at the time these men came

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in and spoke to you about this? A. I contacted this Mr. Dinan and asked him if he had made any arrangements to call a meeting and he told me that he had called Mr. Heywood and that he had done his part and that he had informed Heywood the meeting was to be held and that farther than that he knew nothing about it. There was nothing left for me to do then but to go home and go to sleep and I did.

Q. Did the men at that time show you the cards that they had signed? A. The cards were being retained by the supervisors when they were signed. When they got the men to sign them they did not put the cards back, they immediately signed them.

Q. Did you have a meeting the following day? A. There was a meeting called the following day.

Q. Was that April 23rd? A. That was Friday, April 23, 1937, yes.

Q. I see. Proceed. A. I went down to the 14th Street office; that is, the same place where Mr. William Ganley was, his office, to see what was being done. We



were in a rather remote neighborhood and we were not in a position to have our fingers on what was taking place, and the only way I could see was to go down there and I did.

I found there was a meeting that had been called that morning for his general council and he asked me to

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attend that meeting. That meeting was also held in the Board Room at #4 Irving Place. At that meeting were various members of the general council and Mr. Ganley and myself representing the employees from the former Bronx Gas & Electric Company.

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Q. Did you know before you got there that such a meeting was to be held? A. No, I did not.

Q. Did you attend the whole meeting? A. I did.

Q. Were any representatives of the management in attendance at the meeting? A. No.

Q. What took place at that meeting?

Judge Ransom: I object as in no way binding upon the respondents herein.

Trial Examiner Gates: Overruled.

Judge Ransom: Exception.

693

A. The meeting was called by Mr. Ganley. As soon as it was called a man by the name of Joy, a member of the general council, made a motion that a leaflet or pamphlet of some sort be distributed amongst the employees of the Consolidated Edison System, informing them that the general council had outlived its usefulness and so forth and that they were no longer an existent body, and to that there were quite a few objections, quite

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a few of the people objected to that. One gentleman got,

*Harold Straub—For N.L.R.B.—Direct*

up and said that he thought we ought to hurry up, that they had an appointment to see Mr. Tracy at eleven o'clock, at the Hotel Roosevelt.

Q. Who was he? A. I beg your pardon?

Q. Who was the man that made that statement? A. I could not definitely say just who the man was that made that statement that we had the appointment.

Q. What is your best recollection? A. I recall Mr. Ganley saying that Mr. Tracy had informed them that he could not come to that meeting because the meeting was held on company property but that he was going to be in the Hotel Roosevelt and they could meet him in his room and he would be very glad to talk to them.

Q. Had you known about this before the time of the meeting? A. No sir.

Q. What position did you take in this meeting? A. I was proceeding in this meeting as chairman of the General Council representing the employees of the former Bronx Gas and Electric Company. It was obvious that there was no longer an employee representation, and the people had elected me to represent them and they are trying to do something for them, and the only way I could possibly continue to represent them was to attend the meetings that I had heretofore refused to

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affiliate with; that is, attend a meeting of the council that I had heretofore refused to affiliate with, and that was the council of Mr. Ganley and his council, for various reasons, we had refused on prior occasions to affiliate with them.

Q. Was there any motion made to dissolve the general council and if so, by whom? A. By Mr. Joy, yes.

Q. Was it dissolved? A. No.

Q. What happened? A. Mr. Ganley pointed out that

they had an appointment with Mr. Tracy at eleven o'clock and that they were then late and that he thought that they should adjourn temporarily until they went up to see Mr. Tracy and see what he had to offer, and hear what he had to offer, and then come back and reconvene the meeting.

Q. Did they all leave to go to see Mr. Tracy? A. Yes.

Q. Did you go up? A. I did go up.

Q. Who did you go with? A. I went up with three other fellows in a taxi cab to see Mr. Tracy at the Hotel Roosevelt. I asked Mr. Ganley about that. Mr. Ganley, Miss Callahan and several other fellows were supplied with a company car to go up and see Mr. Tracy.

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Q. Who supplied them with the car? A. I presume the management, that is the only one that could give them the car, the transportation department.

Judge Ransom: I move to strike that out as a presumption on the part of the witness which is wholly unwarranted.

Trial Examiner Gates: It may be stricken.

699

Q. (By Mr. Moscovitz) You do know that they went up in a company car? A. Definitely.

Q. You saw them? A. I did.

Q. Did you all then meet at the Hotel Roosevelt? A. Yes, we met in Mr. Tracy's room in the Hotel Roosevelt.

Q. Proceed. A. Some of us got there a little before the others; those in the taxi cab got there first.

Q. Who were the men that attended? A. All or practically all of the members of the general council of the New York Edison Company, Mr. Walter P. Ganley, Mr. Edward Matty, Peter or maybe it is Patrick, McGrath,

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*Harold Straub—For N.L.R.B.—Direct*

Thomas Hart, Mr. Delia, Mr. Lazardia, Miss Callahan, and a number of others who were at the general meeting.

Q. Was Mr. Dudley Ward present? A. Yes.

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Q. And was Mr. Hinkley? A. Yes, he is the secretary.

Q. Was Mr. Galshot there? A. Yes.

Q. And Mr. Brennan? A. Yes.

Q. Mr. McCray? A. Wait, I do not think so, I am not sure that Mr. Brennan attended that meeting, but I do know that Mr. McCray was there.

701

Q. Mr. Krukel? A. Yes.

Q. Mr. Shields? A. No.

Q. And Mr. Idebach there? A. Yes.

Q. Were those men from one company alone? A. Yes, they all represented and were all members of the general council of the New York Edison Company.

Q. All right. A. Yes.

Q. After you all got together in Mr. Tracy's room can you tell us what happened and who was the spokesman for that group, if any? A. We assumed Mr. Ganley, when I say, "We assumed", it is natural—it is a natural conclusion that the chairman of any organization

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is the man that does the speaking for that organization.

We all went in and after a few minutes Mr. Ganley and the group that had gone up in the company car arrived. They sat down and talked to Mr. Coulter, who was the vice president of the I.B.E.W.

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In a few minutes Mr. Tracy came in the room with Mr. Beretz and was introduced to those who had not met



him as Mr. Tracy. Mr. Ganley made no attempt to ask any questions. I took it upon myself to ask some questions.

Q. What questions did you ask? A. I started off by asking Mr. Tracy if the voting power of 40,000 employees of the Consolidated Edison Company, would only be in one Class B local of the I.B.E.W. The answer to that was that there would not be one local, that there would be seven locals for the members of the Edison Company, or the Consolidated Edison Company, in the I.B.E.W.

Q. Have seven locals been set up? A. They have.

704

I then asked him if the International president had the right to suspend a charter or revoke the membership of any member of the organization for any reason whatsoever. He stated that the International president appeared to have that right but that he never exercised the right unless he deemed it necessary, and so forth. I insisted that according to the constitution of the I.B.E.W. he could, and he said yes, that he could.

I asked him if there was an agreement in existence between the Consolidated Edison Company and the I.B.E.W. and he said that there was.

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I asked him if we could see the agreement. He said no, that we could not. He said that we were not members of the I.B.E.W. I said that inasmuch as we were potential members of the I.B.E.W., and we were employees of the Consolidated Edison Company, and if we joined the I.B.E.W., that agreement would be binding upon us, that I thought we had the right to see that agreement. He said, "No," very definitely no, that on the day that the agreement is official and officially executed, or words to that effect, we will all gather around the table and read the agreement.

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*Harold Straub—For N.L.R.B.—Direct*

Q. Did you make any definite agreement as to whether or not that agreement had been executed at that time? A. No.

Q. Did he make any statement as to whether or not it was simply a proposed contract? A. No. He did not say that. He did say that it was an established contract; that they had a definite agreement.

Q. With the company? A. Yes.

707

Then I asked him the conditions of the agreement and what it meant and all of that and he said that that agreement consisted of recognition of the I.B.E.W. by the management and the right to bargain for the 40,000 employees. I believe it was the same agreement that was shown me. I am not sure.

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Q. Did you ask any other specific questions? A. I did ask several questions that I cannot recall.

708

One question I started to ask Mr. Tracy,—I was very much interested in these linemen, I naturally was, I was their representative, I had the same type of work to do that they do and I started to ask Mr. Tracy the same question I asked Mr. Beretz about working in the rain, and Mr. Ganley got all excited, and he did not know what I was going to ask, and he asked me to stop my questions, and he informed me that I was only invited there. I said to Mr. Tracy, "I represent a group of overhead linemen in the Consolidated Edison," and before I got any further Mr. Ganley said to me, he said, "Now," he said, "wait a minute, you are not a member of our group, you are here just because we invited you. You have nothing to say."

So, I asked him would he wait until I finished the question. I told him he had no idea what I was going to say, therefore, I had no right to ask any questions. I

said, "All right, I will put it in another way. I represent a group of men in the Consolidated Edison that are vitally interested in the matters that we have already outlined with regard to working in the rain and so forth." I asked Mr. Tracy if they will be taken care of in the agreement or what would be done about it and he reiterated the statement that Mr. Beretz had made, that they would take up where we left off.

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Q. Was that statement regarding your linemen? A. 710  
It was.

Q. Was any statement made regarding the United Electric & Radio Workers, of the C.I.O.? A. Yes, by Mr. Tracy.

Q. To whom? A. To Mr. Ganley.

Q. What was it? A. He took Mr. Ganley to task for having read the letter at this meeting in the cafeteria from the president of the United Electrical & Radio Workers. He said it was not a public letter but had been sent to him and it was—that the letter that he had sent, that Mr. Tracy had sent to Mr. Ganley, it was all right to read that letter even though he understood that the letter would not be made public, but he did not think that he had the right to read the other letter; that he certainly did not intend to engage in any competition with any one, and he did not think that that was in his mind at all when he sent Mr. Ganley the letter, and in fact it was not in his mind, according to him.

711

Q. Was there any arrangement made with Mr. Tracy regarding the employee representation plan? A. Mr. Tracy reiterated what he had said in the letter that he

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sent to Mr. Ganley. He told him that he had made cer-

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*Harold Straub—For N.L.R.B.—Direct*

tain definite proposals to them, that they could move into in the way of organization affairs, in other words, they could come right in with their present set-up as a general council, and move right in with the I.B.E.W.; that perhaps they would have to elect an officer or two in each group but that essentially the set-up would be the same until at least the next December when the present employee representation plan would expire and new elections would be necessary.

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He said that that offer would hold good only until the following Monday. It was then Friday, and if they wanted to take it up they would have to act on it very soon.

Mr. McGrath, a member of the general council, jumped up and suggested right there and then on the spot that they ask Mr. Tracy for a charter, that he thought they represented enough employees of the Consolidated Edison Company to be able to ask for one right on the spot from Mr. Tracy, a charter in the I.B.E.W.

714

Mr. Tracy told him that he did not think it would be a good idea, then, for them to sign a petition there, and he said that they would have to sign a petition in order to get a charter. He further said, then, it would not be a good idea to sign it in his room, but that they would adjourn the meeting and they would go off somewhere

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else and sign it, and then they could send somebody back with the petition that day, that they could then consider, the I.B.E.W., they could then consider the granting of a charter.

So, there was a mad scramble to get out of his room and back to No. 4 Irving Place. We all arrived there and the petition was immediately started to be drawn up and



Mr. Ganley and Miss Callahan, who, had been acting as general secretary of the council—

Q. Who was Miss Callahan? A. She represented a section of the company, she represented the stenographic department of the Consolidated Edison Company on the general council. She was the secretary of the general council, not exactly, but she had been assigned by the management of the company to work in the office of the general council. She did all of their typing and the drafting of their stuff for mimeographing, and so forth.

Q. Who drafted the petition? A. Miss Callahan and Mr. Ganley.

716

Q. What was the petition? A. I do not recall the exact wording of it. I do know that after the petition was drawn up, that—I believe there was 22 people signed that petition requesting that a charter be granted to this group representing the New York Edison Com-

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pany or the Consolidated Edison Company.

Q. Did you sign? A. I did.

Q. Was that petition addressed to Mr. Tracy asking for a local charter with the I.B.E.W.? A. Yes.

717

Q. Did the persons signing the petition represent the same persons who had attended the meeting with Mr. Tracy at the Hotel Roosevelt? A. Yes.

Q. Were there any persons in addition who signed the petition? A. I believe that there were one or two people that did not get an opportunity to go to Mr. Tracy's room in the Hotel Roosevelt, but who were present at the time the petition was being signed.

Q. Were you in favor of such a local charter being adopted? A. No.

Q. Why did you sign the petition? A. I took that point up with Mr. Ganley. As I had stated before we

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*Harold Straub—For N.L.R.B.—Direct*

never affiliated with the general council, the former Bronx Gas & Electric Company general council of the Consolidated Companies never did affiliate with the general council of the other Consolidated Companies, or of the New York Edison Company in particular for various

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reasons, that the employees did not take care for them, for their policies and did not care to enter in with or agree with the manner in which the other one or two councils acted.

As spokesman for the group of employees I could naturally do nothing else but what they desired. I pointed out to Mr. Ganley that this was nothing more than a company union being promoted, that they could go over as a general council into the I.B.E.W. essentially as they were at the present time.

I asked him how I could fit into that general picture and he told me if I did not go in representing the employees of the former Bronx Gas & Electric Company, that he could certainly get somebody else to sign that charter representing them for me.

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These people had elected me as their representative and I felt that the only thing I possibly could do was to sign the charter. I did mention to other people that I was signing it and I was going in it only as long as I thought it was a worthwhile thing, and when I thought it was not a worthwhile thing I was going to pull out and get out of it, and I did.

Judge Ransom: I move to strike out the witness' statement, as in no way binding upon the respondents.

Trial Examiner Gates: It may stand.

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Judge Ransom: Exception.

Q. (By Mr. Moscovitz) After the petition was signed, was it taken up to Mr. Tracy? A. Mr. Ganley took the petition up to Mr. Tracy at four o'clock.

Q. What happened? A. Mr. Ganley brought the petition back to Mr. Tracy at four o'clock that day, at or around four o'clock.

Q. Was that the time that it was given to him for the very first time? A. It was the very first time that Tracy had it.

722

Q. Was this an official action taken by the persons who signed the petition in an effort to secure a local charter, and the only such action? A. That was the real birth of that local on the I.B.E.W.

Q. Was there any person present at the meeting when the petition was signed who requested an opportunity to be heard on the C.I.O. question? A. Yes, definitely.

Q. Who? A. Mr. William Kennedy, organizer for the C.I.O.; United Electric and Radio Workers of America.

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He asked these people who were signing the petition as individuals, and collectively, and he spoke to me at the time and he asked them, in all fairness to the em-

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ployees he said in his opinion they ought to at least take one opportunity to play fair to the employees that they represented, inasmuch as they had gone up and spoken to Mr. Tracy and heard what he had to offer, that they should now go up to the national office and make an attempt to get in touch with these people at the national

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*Harold Straub—For N.L.R.B.—Direct*

office of the C.I.O. and he knew that they would be glad to explain to them just what the status of the employees would be if they went into the C.I.O.

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Q. Was anything done about it? A. Absolutely not.

Q. It was turned down? A. No, it was not turned down. No attention was paid to it.

725

Q. Was it then that you came in possession of these cards where you got persons to sign up with the I.B.E.W.? A. No, I was pretty much fed up with the whole thing.

Q. Had you received these cards before you signed the petition? A. No, sir.

Q. Was it afterwards? A. That is right, I received these cards at a later date in Mr. Ganley's office.

Mr. Moscovitz: Mr. Examiner, Mr. Ransom has pointed out that he has a five o'clock appointment and I join with him in a request that we adjourn.

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Trial Examiner Gates: There is one question that I would like to have cleared up in today's record and that is approximately what date are we now in the story. There have been very few references to the date.

Mr. Moscovitz: As I mentioned, and as I understand from the witness' testimony, the date concerning which he has been testifying was April 23, 1937.

The Witness: That is right, Friday, April 23, 1937.

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Q. That is the time when the petition for the local charter was submitted to Mr. Tracy? A. Absolutely.



*Adjournment*

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Q. That is the time to which you refer and about which we are now talking, is that it? A. Yes sir.

(Witness temporarily excused.)

Trial Examiner Gates: We will recess until ten o'clock tomorrow morning.

Mr. Moscovitz: Will the Examiner ask the witnesses who are now here under subpoena to return here tomorrow morning?

Trial Examiner Gates: Those witnesses who are now in attendance here under subpoena will please return tomorrow at 10:00 o'clock A. M. 728

(Whereupon the hearing adjourned at 4:45 P. M.)

**ADJOURNMENT**

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Minutes of Hearing, Held June 11, 1937

BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
SECOND REGION

IN THE MATTER  
of

731 CONSOLIDATED EDISON COMPANY OF NEW  
YORK, INC., and its affiliated companies,  
BROOKLYN EDISON COMPANY, INC.,  
NEW YORK & QUEENS ELECTRIC LIGHT  
& POWER COMPANY,  
WESTCHESTER LIGHTING COMPANY,  
THE YONKERS ELECTRIC LIGHT AND  
POWER COMPANY,  
NEW YORK STEAM CORPORATION,  
CONSOLIDATED TELEGRAPH & ELECTRICAL  
SUBWAY COMPANY,

*Respondents,*

and

732 UNITED ELECTRICAL AND RADIO WORKERS  
OF AMERICA, affiliated with the COMMITTEE  
FOR INDUSTRIAL ORGANIZATION.

Case No.  
II-C-224

14 Vesey Street,  
New York City, N. Y.,  
June 11, 1937.

The above-entitled matter came on for hearing pursuant to adjournment taken June 10, 1937.

Before:

ROBERT M. GATES, Trial Examiner.

Appearances:

DAVID A. MOSCOVITZ, Esq., Attorney for the National

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Labor Relations Board.

**Harold Straub—For N.L.R.B.—Direct**

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**WILL MASLOW, Esq., Attorney for the National Labor Relations Board.**

**LOUIS B. BOUDIN and SIDNEY ELLIOTT COHN, 8 West 40th Street, New York, N. Y., appearing for United Electrical and Radio Workers Local 1212.**

**MESSRS. WHITMAN, RANSOM, COULSON & GOETZ, 40 Wall St., New York City, N. Y. (By William L. Ransom and Pincus M. Berkson), appearing for the respondent companies.**

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**PROCEEDINGS**

**Trial Examiner Gates: You may start, gentlemen.**

**HAROLD STRAUB, witness on the stand at time of adjournment, resumed, and continued his testimony as follows:**

**Direct Examination (Continued):**

**Q. (By Mr. Moscovitz) Yesterday, Mr. Straub, as I recalled, you testified about the birth of Local B-829. Those were your words? A. Yes, sir.** 735

**Q. Will you go back a moment again to the Thursday meeting of April 22, 1937, and tell me whether or not you at that meeting made any specific protest to Colonel Stillwell? A. Not at that meeting, but at a meeting with Col. Stillwell, the afternoon, Thursday, April 22nd, I did protest the discrimination against the employees by the Consolidated Edison Company, through Col. Stillwell.**

**Q. Was there conversation on that point? A. Yes, there was. I called a man located in one of the plants and in the course of conversation with him he told me**

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*Harold Straub—For N.L.R.B.—Direct*

that I.B.E.W. pledge cards were being distributed by supervisors in that company and in that area for the men to sign. After hanging up the receiver and talking to him, I immediately called Colonel Stillwell's office and asked if I might speak to him, if I might go up and see him, and his secretary, Miss Meyers, told me I should come up, that he probably could grant me a few

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minutes. I went upstairs to his office and went in and was finally admitted to his office and he said to me, "Sit down, Straub. What is on your mind?"

I told him that I preferred to stand up, that before I was finished talking, I imagined he was going to have me thrown out, so he said, "No, I wouldn't think of doing anything like that. What is the trouble?" I said, "There is a bad smell up my nose and a sick feeling in the pit of my stomach."

He said, "There is a lot of us that feel that way these days. What is causing yours?"

738

I said that I resented the fact that the employees in the Consolidated Edison Company were being intimidated and coerced into joining the I.B.E.W. and he asked me where that was going on, and in what department that was taking place, and I told him, and he reached over and took a pad that was laying on the desk and a pencil and started to write on it, and I assumed that at that time he was issuing an order that would stop the intimidation and coercion, at least in that department, but I found out later that he did not do that, because the intimidation and coercion continued, has continued and is continuing—

Judge Ransom: I move to strike out the witness's testimony as a conclusion. It is not anything he told the officer of the company. That is



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the petitioner's argument in this case, but it is not in the testimony. I want to strike out everything after the word "because."

Trial Examiner Gates: Please read that part of the answer.

(That portion of the answer read.)

Trial Examiner Gates: It may be stricken.

Judge Ransom: What is the ruling?

Trial Examiner Gates: It may be stricken.

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Q. (By Mr. Moscovitz) After Col. Stillwell made notes of your conversation, did you leave? A. Almost immediately. There was a few words further.

Q. Can you tell me whether or not there was, to your knowledge, a cessation of activity within the company of the practice which you had protested to Col. Stillwell?

Judge Ransom: Objected to on the ground that the witness has not undertaken and could not undertake to speak with respect to the entire company. The witness's testimony related to one department which he has not yet named.

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Trial Examiner Gates: He may answer, so far as his knowledge goes, indicating the sources of his knowledge.

Judge Ransom: Exception.

A. The particular department to which I refer is known as the Overhead Construction Department. This activity with regard to that department has not ceased or did

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not cease.

Q. (By Mr. Moscovitz) Why do you say that? A. Because up until as late as yesterday employees were

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*Harold Straub—For N.L.R.B.—Direct*

being informed of I.B.E.W. meetings that were taking place, this meeting; were being informed by their foremen and told to attend that meeting, to be sure that they attend that meeting.

Q. Who were the foremen? A. I received my knowledge from a man who worked as a clerk in the office at 155 Purdy Street. He told me that the—

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Judge Ransom: (interposing) Just a moment, I object to that as purely hearsay. I move to strike out the answer as far as given, on the ground it is wholly incompetent and not in any way evidence against any of the respondents.

Trial Examiner Gates: You may continue, indicating the name.

Judge Ransom: Exception.

A. The name was Huber. He told me that Mr. Gregson, assistant to Mr. E. E. Hill who, in turn, is assistant superintendent of the overhead and underground transmission construction and distribution departments of the Consolidated Edison Company.

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This Mr. Gregson had called up and told him, in turn, to tell the different foremen to be sure to attend the meeting that is to be held tonight at Tremont & Third Ave. in the Bronx, and also informed me that Mr. Ganley, the president of Local B-829 would attend the meeting and address these people.

Judge Ransom: I move to strike out the answer as wholly incompetent and in no way related to any of the respondents.

Trial Examiner Gates: Read the answer.

(Answer read.)

Trial Examiner Gates: It may stand.

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Judge Ransom: Exception.

Q. (By Mr. Moscovitz) After Local B-829 came into existence, did you become active in the affairs of the I.B.E.W.? A. Not immediately. On that Friday, after seeing—

Q. (interposing) When you say "that Friday," you refer to April 23, 1937? A. That is right.

Q. Yes. A. The week-end, in between the next succeeding working days, I gave serious thought and consideration over the week-end. I decided I would go back to my job as a lineman and indulge in as little activities as I possibly could. I did that. I went back to work the following Monday morning and reported out on the line-gang, and worked as a lineman that day and the following day.

Tuesday, May 4th, at 4:20 o'clock p. m., the foreman, a foreman of the gang, Mr. George Saltzman, in making his periodical call to Mr. Edward Haywood at 41st Street, came back, after making his call, and told me that there was a meeting being called that night by Mr. Ganley in room No. 1237 at the company premises, No. 4 Irving Place and that I was to attend that meeting.

Q. Was that a meeting of the I.B.E.W.? It was.

Q. What local? A. Local B-829.

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Q. Yes. A. Yes.

Q. Did you tell him that you would attend, or did he tell you that you were to attend? A. What was that?

Q. Did he tell you that you were to attend? A. He told me that I was to attend that meeting, that he was to notify me that there was a meeting to be held and that I was to attend the meeting and also he added that the

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*Harold Straub—For N.L.R.B.—Direct*

meeting was called for five o'clock, and he also laughed, when he commented upon the fact that I was notified at 20 minutes after four of a meeting that was to be held at five o'clock that same day.

Q. What was the name of this man, again? A. George Saltzman.

Q. What is his position? A. Lineman-foreman, in charge of a gang, a truck of linemen of the overhead construction department.

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Q. Who was it, you say, that he told you had informed him? A. Mr. Edward Haywood, the man that we had; that the foreman had to call periodically.

Q. What was Mr. Edward Haywood's position? A. His title is that of office assistant, first grade. He works for Mr. E. E. Hill in the office of the overhead construc-

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tion department.

Q. Is he an assistant to Mr. E. E. Hill? A. He is in that office.

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Q. What is Mr. E. E. Hill's job? A. Mr. E. E. Hill is the assistant general superintendent of the overhead and underground transmission construction and distribution departments of the Consolidated Edison Company.

Q. At this time, were you a member of the C.I.O.? A. No.

Q. Did you attend the meeting? A. I did.

Q. Were representatives of the management in attendance? A. No.

Q. Were there any foremen or other supervisory employees in attendance? A. No.

Q. How many people attended, do you know? A. All of the people that had signed the charter, the petition for the charter, rather, and presented the same to Mr. Tracy.



*Harold Straub—For N.L.R.B.—Direct*

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Q. Were there other employees in addition to those in attendance? A. No. There were only the charter members; only the people that had signed this charter.

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Q. Were these people that had signed the charter and had attended that meeting at this time officers of the new local? A. In accordance with the agreement that they had with Mr. Tracy, the International president of the International Brotherhood of Electrical Workers—

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Judge Ransom (interposing) Just one moment. I move to strike out the witness's conclusion, "in accordance with the agreement that they had with Mr. Tracy, the International president of the International Brotherhood of Electrical Workers," as wholly incompetent, as a method of proving any such matters. In any event, it is in no way related to or binding on the respondents herein.

Trial Examiner Gates: Read the answer of the witness, so far as given.

(Answer read.)

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Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Answer the question. A. In accordance with the agreement that they had with Mr. Tracy, the International president of the International Brotherhood of Electrical Workers, the officers in the former general council of the New York Edison Company continued to hold their office after the company union was abolished and they picked up and received

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*Harold Straub—For N.L.E.B.—Direct.*

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a charter from the International Brotherhood of Electrical Workers.

Q. So that the persons who signed the petition and who had previously to that held official positions with the employee representation plan became officers of the new local? A. All of the officers in the old general council did become officers in the International Brotherhood of Electrical Workers with the difference that some of their positions were changed.

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Q. When you say in the International Brotherhood of Electrical Workers, do you refer to Local No. B-829?

A. Yes, Local B-829.

Q. For instance, Mr. William B. Ganley, who was chairman of the general council, was he—let me put it this way—what position did he hold with Local B-829 of the International Brotherhood of Electrical Workers? A. He is now president of Local No. B-829 of the International Brotherhood of Electrical Workers.

Q. Edward Maddie, who was vice-chairman of the general council, what is his present position? A. He is now vice-president.

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Q. C. Hinckley, former secretary of the general council, what is his position with the local? A. He is now the financial secretary of Local B-829.

Q. And you made reference to the fact that a Miss Callahan, E. Callahan, was assistant to Mr. Hinckley

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in the general council. What is her position with the local? A. She is now the recording secretary for Local B-829.

Q. Patrick McGrath, who was formerly chairman of the department council,—what is his position with the local? A. He is business manager for Local B-829.

Q. Mr. Brennan, who was chairman of the department council, what is his position now in the local?  
A. He is now the treasurer of Local B-829.

Q. And Mr. Galschodt, who was chairman of the department council, what is his position now with the local? A. He is an executive board member, of Local B-829.

Q. And Mr. Lazzardi, who held the position of chairman of the department council, what is his position now with the local? A. He is a member of the executive board of Local B-829.

Q. Is the same true of Mr. Eidelbach, Mr. Hart and Mr. Delvac, Mr. Flannigan, and Mr. Johnson? A. It is.

Q. Was there any person who attended the meeting where the petition was signed, requesting affiliation with the I.B.E.W., who did not sign the petition? A. Will you repeat the question, please.

(Question read.)

A. The petition was signed, not at a meeting, but rather in a gathering after the meeting with Mr. Tracy, in the

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office of Mr. Ganley, in room 1237 in the Fourteenth Street Building of the company.

There were people there present that objected to the signing of the petition. They did not sign the petition.

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Q. Were they persons who held official positions with the general council? A. They were.

Q. Did any of the persons who objected to the signing of the petition become members of the official body of the New Local? A. They did not.

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Q. How long did you continue in your membership with the I.B.E.W.? A. Until the following week, I don't recall the exact date.

Q. What month would that run you into? A. May.

Q. The middle part of May? A. About the 2nd week of May.

Q. Did you engage in any activity for the I.B.E.W. during the period immediately preceding your becoming a member of the C.I.O.? A. I did.

Q. What was that activity? A. The activity was  
761 more or less compulsory.

Judge Ransom: Move to strike out the answer as wholly incompetent, highly argumentative. If the witness wishes to argue for the C.I.O., he should do that on the floor and not on the stand.

Trial Examiner Gates: It may be stricken.

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Q. (By Mr. Moscovitz) Tell us what your activities were during the period immediately preceding your becoming a member of the C.I.O.? A. I attempted to, and did, locate the cards that had been signed by the members of the line department for the overhead construction department in the Bronx, due to the fact that a man by the name of Mr. Flannagan was sent up to see me on the job where I was working, by Mr. Ganley.

Q. Who is Mr. Flanagan? A. Our member of the executive board of Local B-829, a member of the general council.

Q. What is his job? A. He works in the service and records, or plant and inspection department. I don't know exactly where.

Q. Is he a supervisory employee or a regular worker?  
A. I believe he is a regular worker.



Q. And before he became a member of the official family of the I.B.E.W. local, did he spend all of his time as did you, on employee representation plan work? A. No.

Q. He did not? A. Part of his time.

Q. Part of his time? A. Yes.

Q. All right. Now, tell us further what took place.

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A. Mr. Flanagan came up to see me, came out on the job where I was working as a lineman and called me aside and talked to me and wanted to know why these people that had signed the cards, why I had not collected their initiation fees of \$1.50 each. He had with him a set of receipt books from Local B-829 of the I.B.E.W. and we had quite a talk and I told him that I didn't know where these cards were, that I had never seen the cards, they had been signed by the employees for a supervisor of the company, and I had no way of knowing even where the cards were, and he suggested that I try and find out where the cards were, and I did.

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Q. What did you find? A. I found that these cards had been sent to Mr. Edward Haywood in 41st Street and from there had been forwarded to Mr. Ganley who had then taken up his office at 60 East 42nd Street. I went up to see Mr. Ganley and—

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Q. Did you say 60 East 40—what street? A. 2nd Street.

Mr. Ransom: Just a moment. I move to strike out the entire conversation with Mr. Flanagan and—as in no way related to or binding upon the respondents, wholly outside any issue brought by the complaint and charge.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

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Q. (By Mr. Moscovitz) What were those offices? A.

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They were and are now the office of Local B-829 of the International Brotherhood of Electrical Workers. They are located in 60 East 42nd Street, in the Lincoln Building, room 934.

Q. Do you know at that time whether Mr. Ganley was still employed by the Edison Company? A. I don't know.

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Q. Go on. A. I went in to see Mr. Ganley in his office and he greeted me with the words that he had heard some bad news about me; that he had heard that I was going around trying to sell the people the C.I.O. instead of the I.B.E.W. and I told him that in the location in which I worked there were many members at that time in the C.I.O. and that I could not find anything that I could argue with them about against the C.I.O. and he said to me, "Well, you want to remember that you are in the I.B.E.W. and that you are affiliated with the American Federation of Labor, and forget all about the C.I.O."

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He said, "We have 6,000 paid members, 6,000 members, and 6,000 paid members, and the rest of them are going to get into the I.B.E.W. whether they like it or not."

After a little further discussion I asked him whether these cards were that the people had signed up in the Bronx and he brought me out and showed me his files, the files where these cards were located, and told me to take them out, that they had not had time to file them

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in alphabetical order; that they were just thrown in there and that I should take them out and pick out the

names of the men whom I represented in the Bronx, that I should take these cards back to the Bronx and contact these men and collect off them the necessary \$1.50 for each card as an initiation fee into the I.B.E.W. I went through those files and I did take those cards. In addition to that, the then financial secretary of the council, Mr. Charles Hinkley, called me into his office which adjoined Mr. Ganley's office and showed me a group of cards that had been mailed to him, that had been signed by girls, girl employees, in the office of 43 Westchester Square. He asked me if I knew any of those people and if I would take those cards up there and collect the money from those people. I said that while I did not know the people, I knew of them, I knew where they were located and I would take the cards up, and I did.

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I took the cards that day, I made no attempt whatsoever that day to collect the money.

Judge Ransom: I move to strike out the narrative of the conversation with the president and secretary of this local union at his office in 42nd Street and between these officers of the Local and this witness. Strike it out as wholly incompetent, and in no way related to any issues under the complaint and as in no way either binding or relevant to or related to any of the respondents.

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Trial Examiner Bates: It may stand.

Judge Ransom: Exception.

A. The following morning—

Q. (By Mr. Moscovitz) What would that date be? A. I am not exactly sure of the date. I think that was—

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**Trial Examiner Gates:** Would a calendar help you?

**The Witness:** No, but that card that you showed me yesterday would.

**Q. (By Mr. Moscovitz)** You mean the application cards? **A.** That's right. The exact date was May 11th, the date I was in Mr. Ganley's office.

**Q.** Do you know whether or not Mr. Ganley is still employed by the company? **A.** I do not, no.

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**Q.** When was the last time that you knew he was employed by the company?

**Judge Ransom:** Objected to as wholly incompetent. The witness could not know. The most that he could possibly know would be what Mr. Ganley told him.

**Trial Examiner Gates:** He may answer.

**Judge Ransom:** Exception.

**A.** At the meeting that I attended of Local B-829, at 60 East 42nd Street, at which they elected their officers, I was told at that meeting that Mr. Ganley was then on

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his vacation from the company; that he had received his vacation pay and was on his vacation. They were negotiating for leave of absence for Mr. Ganley at that time, but it had not yet been granted.

**Judge Ransom:** Would you fix that date as to that meeting for the election of officers?

**The Witness:** That meeting was held, I can't recall the exact date, it was approximately the 9th or 10th of May.

**Q. (By Mr. Moscovitz)** Who told you this? **A.** Mr. Ganley himself and the secretary of the council, the recording secretary, Miss Callahan.



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Q. That is a meeting about which you have not yet testified? A. That's right.

Q. Before you tell us what you did about these application cards for the I.B.E.W., will you, for a moment, go back to the meeting of May 4th which you started to testify about before when I interrupted you. That was the meeting of Tuesday, May 4th. A. That meeting was called specifically by Mr. Ganley for the purpose of drawing up a list of questions to present to Mr. Tracy, to find out just what latitude they had, just what they could do, how much of the initiation fee they were collecting from the employees were to be assigned to them; who would pay their expenses, the expenses that they were incurring; whether they would be paid by the International Brotherhood of Electrical Workers, or who

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would pay them. Another question that they drew up and asked Mr. Tracy, and subsequently received an answer to, and, incidentally, these lists of questions were drawn up and typed by the secretary of Local B-829, and given to the members to see the answers.

Q. Where was this meeting held? A. Room 1237 at No. 4 Irving Place. 777

Q. Was it after five P.M.? A. Yes.

Q. Was it also in the Board of Director's room? A. No, that was in the office assigned to Mr. Ganley at No. 4 Irving Place.

Q. His regular office? A. That's right.

Q. Were those in attendance the persons whom you have already listed as being the new official family of the new Local? A. At that time they had not served or had not been elected as the new officers of Local B-829, although Mr. Ganley had received a charter from Local B-829 and the meeting was being held under the auspices

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of Local B-829. Mr. Ganley was acting then as the president of Local B-829. There was never an election to elect him president. He just went over from chairman of the general council to president of the Local B-829.

Judge Ransom: I move to strike out the last sentence of the witness' answer as a conclusion.

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Trial Examiner Gates: It may stand.

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Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Was there ever a meeting for the election of the other officers of the Local, in so far as you know? A. Yes, that meeting was held at a later date, the meeting which I had gone into before.

Q. Yes, but at that time the officers had not been elected but were acting without the vote of the membership? A. That's right.

Judge Ransom: I move to strike out the answer as incompetent, calling for a conclusion, not a proper method of proof.

Trial Examiner Gates: It may stand.

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Judge Ransom: Exception.

Q. (By Mr. Moscovitz) What were the questions which were drafted to Mr. Tracy at that meeting? A. I cannot recall all of the questions, although I do recall their number. There were 13 questions drafted. I recall some of the questions and some of the answers. I cannot recall them all.

Q. Were the questions which went to the working conditions which would be in effect in the various companies under the I.B.E.W. proposed agreement? A. Absolutely not.

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Q. Were they questions which were submitted by the membership for the purpose of determining what work would do for the employees? A. Absolutely not.

Q. What were the questions then directed to? A. The questions were directed to Mr. Tracy and asked him various questions such as I have stated, how much money of the \$1.50 initiation fee would be assigned to the Local union; who would pay their expenses; or the expenses that they were incurring in organizing the Edison Company employees, and I believe the answer to that was that there would be no pay from the International Union, that that would have to be taken up later by the Local itself.

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Another one of the questions they asked Mr. Tracy was whether they would need, in the event that they would need a 51 per cent majority of the employees of the company, could they consider the application cards that had been signed by employees but which no money had been collected on—could they consider those people as members of the I.B.E.W.

Q. Did Mr. Tracy answer that question? A. He did. His answer was that they did not need 51 per cent as they already had recognition from the management.

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Q. And at this meeting were any proposals made regarding the collection of initiation fees? A. Yes.

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Q. By whom? A. A Mr. Brennan.

Q. Is that the treasurer of the Local? A. That's right.

Q. What was the proposal?

Judge Ransom: Objected to as wholly incompetent, in no way related to or binding upon the

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respondents, what may have taken place in a meeting of a local organization of employees, in no way binding.

Trial Examiner Gates: Objection overruled.

Judge Ransom: Exception.

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A. The statement that Mr. Brennan made was due to the fact that there was much discussion as to just how they would go about compelling the employees that had signed these cards to pay their \$1.50 initiation fee, Mr. Brennan suggested that they form a committee from among these charter members, these former members of the general council, and contact the management of the company, and ask them to strike from the pending list of raise increases the names of those people who had not paid their \$1.50 initiation fee into the I.B.E.W., into Local B-829 of the I.B.E.W.

Q. And what was done in regard to that proposal, do you know? A. There were very many very pretty speeches made about it. I objected very vigorously to it. A Mr. McGrath—I objected to it on the ground that

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these people were there by virtue of the fact that they were originally elected as employee representatives in a company union and that they should remember that they would not be there unless they had been elected by the employees, and they were there to represent all of the employees, whether they were in the I.B.E.W. or not.

Mr. McGrath, present business manager, got up and reminded me that the employee representation plan was now dead and, therefore, they didn't have to remember any of the agreements that had been made by them as members of the employee representation association. I informed Mr. McGrath and everybody else present that



besides the employee Representation Plan having died, that their consciences had died with it.

Mr. Hinkley got up and made a very pretty speech saying that this was war, and that in war everything was fair, and that there was no reason why they should not use any means at their disposal to compel the people that had signed the I.B.E.W. cards into paying the \$1.50 initiation fee.

I continued to object and pointed out that most of the people that had signed these cards had been black-jacked into signing them, that they did not want to sign them to begin with. There was much more discussion, pro and con and finally the idea was dropped.

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Judge Ransom: I move to strike out the answer as highly incompetent and improper, as not evidence of any of the things which the witness undertakes to represent himself as saying in a meeting of the Local Union, in no way relating to or binding on the respondents.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. Was it after that meeting that Mr. Flannigan came to see you about your failure to collect the initiation fees? A. It was.

Q. That was the testimony that you were giving immediately before I asked you to go back and describe the May 4 meeting? A. Yes, it was.

Q. You testified that these cards were turned over to you? A. I was directed to the files by Mr. Ganley and he instructed me to take these cards and bring them up to the Bronx, and attempt to collect, and to collect for them the fees if possible of \$1.50 initiation fees of these people.

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Q. Did you agree to do that? A. I took the cards. I did not agree to make the collections.

Q. What was the arrangement between yourself and Mr. Ganley concerning the collection of dues? A. There was no definite arrangement, Mr. Ganley instructed me to collect the dues and I did not agree with Mr. Ganley

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that I would collect them. I did take the cards as he instructed me to do, and I later went out and attempted to collect some of the money on these cards.

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Q. When did you attempt to do that? A. The following day.

Q. When was that? A. May 12, 1937.

Q. Was this during your regular working hours? A. It was.

Q. Was it on company property? A. It was.

Q. Did you secure permission to do this? A. I had objected from the time the International Brotherhood of Electrical Workers was recognized, about these cards—it was common knowledge throughout the system that the heads of Bureaus and heads of departments and the general council members were collecting this money, and I consistently and constantly refused to become—

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Judge Ransom: I move to strike out the witness' last statement as argumentative as to what was common knowledge.

Trial Examiner Gates: I think it would be well for you to answer the question which was, "Did you secure permission to do this?"

The Witness: I did.

Trial Examiner Gates: The previous answer may stand.

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Judge Ransom: Exception.

Q. (By Mr. Moscovitz) From whom? A. From P. G. Elliott, electrical engineer, in charge of the former Bronx Gas and Electric Company division under which we were employed.

Q. He was a supervisory employee? A. Oh, yes.

Q. How many men were under him? A. In charge of the overhead construction department of the Bronx, was his particular field.

Q. And that brought under his jurisdiction approximately how many men? A. All of the linemen, the helpers and the chauffeurs in the Bronx.

Q. I see. A. Yes.

Q. When and where did you secure this permission from him? A. I had asked him on several different occasions, telling him that I would not collect any money for the International Brotherhood of Electrical Workers unless I received permission to do it.

I went in and saw him that morning and asked him if he, in turn, had received permission from or had spoken to anyone at 41st Street, any of his supervisors and gotten their permission to have me collect the

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money, and he said, "Go ahead and do it, everybody else is doing it", and I did, and Mr. Flannigan accompanied me.

Q. Did you collect any dues? A. I did.

Q. From whom? A. Miss Mildred Sodergren.

Q. Where is she employed? A. 43 Westchester Square, Bronx, New York.

Q. What was that? A. Formerly the commercial division office of the Gas Company.

Q. In what capacity is she employed? A. Secretary to Mr. Peterson.

Q. Who is he? A. Former general manager in the

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Bronx. He has the same position with the Consolidated Electric Company.

Q. Today? A. Today.

Q. Did you go into her office to collect the dues?  
A. Yes.

Q. What took place? A. She had signed this card. I had the card. Prior to that I had contacted all of the girls that had signed these cards—they had mailed these cards down to the office at 60 East 42nd Street and they had refused to pay the \$1.50 initiation fee later on.

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They gave various arguments why they did not want to pay it. I went in to see this girl accompanied by Mr. Flannigan and told her that she had signed the card and asked her if she would care to pay the \$1.50 initiation fee. She said she would and she paid me the \$1.50 fee.

I gave her a receipt from the regular receipt form book of the International Brotherhood of Electrical Workers, and she paid that at three o'clock in the afternoon on the premises at No. 43 Westchester Square in the Bronx.

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Q. Did you do this collection work openly, or did you do it secretly so that nobody would see you?

Judge Ransom: I object as highly incompetent, calling for a conclusion, no probative value, and in no way relating to or binding upon the respondents. I submit that this is just an adjective of an argument and not a factual statement.

Trial Examiner Gates: Overruled.

Judge Ransom: Exception.

A. Quite openly.



Q. (By Moscovitz) When you say "quite openly," what do you mean? A. I mean exactly "quite openly", nothing secret at all about it, everyone in the company knew what I was doing, everybody in the department that I worked in knew what I was doing.

Q. Were there other employees in location with this

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young lady? A. The principal office that she is working in, that particular office in which she was formerly in was the former bookkeeping department of the Bronx Gas and Electric Company. Due to alterations that they are making on the building, the office of Mr. Peterson was moved down into this location. She is the only one located in that particular area.

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Q. Did you, after collecting this money from her, go into the other office and attempt to collect any dues from any persons? A. Oh, I did that before and after collecting the money from her.

Q. Did you collect the dues from any other person? A. I did not.

Q. Did you make an effort to? A. I did.

Q. Why did you not collect the dues? A. They refused to pay it.

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Q. What did you do about that? A. I did not do anything about it. I thought they were doing a swell job.

Q. In not paying you? A. That is right.

Q. Was Mr. Flannigan with you at this time? A. He was.

Q. Did you go elsewhere in an effort to collect dues?

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A. No sir.

Q. Were there any other gentlemen with you out-

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*Harold Straub—For N.L.R.B.—Direct*

side of Mr. Flannigan while you collected these dues?  
A. No.

Q. Do you know whether or not other persons were on that day, making the rounds in an effort to collect dues? A. No, not on that particular day, no.

Q. What did you do with the money that you collected from this young lady? A. I turned it over to Mr. Flannigan who had the receipt book then which the receipt came out of, which we used and which she received, a receipt for the \$1.50.

803

Q. How many other cards did you have with you at that time that you were collecting on? A. The cards of all the linemen that had signed the I.B.E.W. that is all of the linemen that were formerly with the Bronx Gas & Electric Company plus the cards of these girls in the office at 43 Westchester Square.

Q. May I see the card that this young lady signed? A. Yes. Here it is.

(Witness shows counsel the card.)

Q. Is that her signature? Do you know? A. It is her signature.

804

Q. Whose signature is that next to hers? A. That is one of the other girls in the office. This is a card—

S. M. 176

this original card that she signed and was sent down to 60 East 42nd Street. At the time that this \$1.50 was paid, she made out another card. Of course, I gave her a blank card and she made the card out, typed it, and signed it. It was not supposed to be legal unless a member of the I.B.E.W. signed it and since the girl who had signed it originally was not a member of the I.B.E.W., therefore, I was requested to and requested her to make out another card which she did.

*Harold Straub—For N.L.R.B.—Direct*

805

Q. What is the name on here? A. (Inspecting the card for several moments) I cannot very well make it out.

Q. Then you say this is typical of the—this is, you say, the original card? A. This is the original card.

Q. The same as all the other cards that have been signed by persons who have become members of the I.B.E.W. of the system? A. No, there is a difference in the cards.

Q. Is the difference dependent upon the type of membership? A. No, the difference is dependent upon the fact that this is only one half of the pledge card of the I.B.E.W., which comes in another portion. These people were joining the I.B.E.W. so fast and furious that they ran out of these application cards and they decided to tear them in half and distribute

806

S. M. 177

them around until they could get them all signed up and then they would come back later and sign them up on the full card. When I say "them", I mean the former members of the general council.

Q. This is the kind of a card that you circulated? A. Yes, this is the kind of a card they signed originally. I had in my possession at that time blank cards. These people were filling out these cards as I brought them around. They were supposed to. This is the only person that did fill one out in fact.

807

Q. What was the other half supposed to represent, a receipt? A. No, they were divided into two sections. I have one, I brought with me this morning, about 150 of those cards that I received from the secretary, Mr. Hinkley, in his office.

Q. Is this one of them? A. Yes.

Q. Is this a full card? A. That is it.

*Harold Straub—For N.L.R.B.—Direct*

Mr. Moscovitz: Will this be marked for identification?

Trial Examiner Gates: It may be so marked.

(Document referred to marked Board's exhibit No. 6 for identification, Witness Straub.)

Q. (By Mr. Moscovitz) I show you Board's exhibit No. 6 marked for identification and ask you whether

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or not this is the full card that was issued for application? A. It is.

Mr. Moscovitz: I ask that this be marked for identification.

(Document referred to marked Board's Exhibit No. 7 for Identification, Witness Straub.)

Q. (By Mr. Moscovitz) I now show you Board's Exhibit No. 7 for Identification and ask you if this is the original card signed by Miss Mildred Sodergren? A. It is.

810 Q. Board's Exhibit No. 7 for Identification was then the top part of it, was it, of Board's Exhibit No. 6 marked for Identification? A. I beg your pardon sir, I was looking at this.

Q. Would you say that Board's Exhibit No. 7 for Identification was just the top part of the full card which has been marked as Board's Exhibit No. 6 for Identification? A. Well, it would depend entirely upon the way you read the card. If you turn it around one section is on top. If you turn it around the other way, the other section is on top.

Q. Both sections are comparable; is that correct? A. Yes, sir.



*Harold Straub—For N.L.R.B.—Direct*

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Mr. Moscovitz: I offer in evidence Board's Exhibit No. 6 marked for Identification.

Mr. Ransom: Objected to as unrelated to any

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issue in this case; in no way binding on these respondents.

Trial Examiner Gates: It will be admitted.

Judge Ransom: Exception.

◦ (Document referred to marked Board's Exhibit No. 6 for Identification received in evidence, Witness Straub.)

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Mr. Moscovitz: I offer in evidence Board's Exhibit No. 7 for Identification.

Judge Ransom: Same objection.

Trial Examiner Gates: It will be admitted.

Judge Ransom: Exception.

(Document referred to marked Board's Exhibit No. 7 for Identification received in evidence, Witness Straub.)

Q. (By Mr. Moscovitz) Were these other cards which you showed me yesterday, and which I now hand you, signed by Cornelius Blackledge, Joseph W. Lammetz, Henry R. Lange and Luther O. Grove. Were these cards, cards which you also secured to obtain the fees on? A. Yes, but I did not secure the payment of fees except on the one; the only one that I secured any fees on was the one card of Miss Mildred Sodergren.

813

Q. Did you secure the signatures to these cards? A. I received these cards with the signatures already affixed to them. They had been secured by somebody else.

Q. What was your reason for taking out these particular four or five cards out of this batch?

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*Harold Straub—For N.L.R.B.—Direct*

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Q. There was no particular reason. These are people that joined the C.I.O. subsequent to signing these cards; people that objected to the—or from the start from signing their cards and people that were told if they did not sign them they would be out in the cold.

Judge Ransom: I move to strike out the statement as incompetent, unidentified, not related to the respondents.

815

If this is the sort of thing that is going to be accepted as testimony in a quasi judicial proceeding, I wish to reserve my rights as to it.

Trial Examiner Gates: Did they tell you that?

The Witness: Sir?

Trial Examiner Gates: Did they tell you that?

The Witness: Yes.

Judge Ransom: I object to that question because that is almost as indefinite as the question that the Board's counsel asked him. I move to strike out the answer.

Trial Examiner Gates: It may stand.

816

Judge Ransom: Exception taken in both instances.

Q. (By Mr. Moscovitz) Are the four persons whose names appear on the cards that we have just referred to persons still employed by the company? A. They are.

Q. What company? A. Consolidated Edison Company of New York.

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Q. Are they linemen? A. Not all of them.

Q. Is Luther O. Grove a lineman? A. That is right.

Q. Is Mr. Henry R. Lange a lineman? A. That is right.

Q. Is Mr. Lammetz an installer? A. He is entitled "Installer" but he is actually a company chauffeur.

Q. And is Mr. Cornelius Blackledge a lineman? A. That is right.

Q. After this day in which you collected one payment from this young lady whose card has been introduced, you testified that you secured no other payments of these fees? Is that right? A. That is right.

Q. Did you continue elsewhere in an effort to secure payments? A. No sir, I did not.

Q. Did you take further efforts after that, or did you after that do any work at all for the I.B.E.W.? A. I did not. 818

Q. Was that the last active step that you took under the I.B.E.W.? A. That is right.

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Q. Were you at that time a member of the C.I.O.? A. No.

Q. Before you did become a member of the C.I.O. and after the day when you collected this \$1.50, did you attend any other meetings of the I.B.E.W.? A. The day that I collected the \$1.50.

Q. After you collected the \$1.50? A. After I collected the \$1.50 I attended no other meetings of the I.B.E.W. 819

Q. Did you before you collected the \$1.50 attend any meetings of the I.B.E.W. about which you have not yet testified? A. I attended a meeting at 60 East 42nd Street, at which were officers elected of Local B-829.

Q. When was that? A. I do not recall the exact date of the meeting.

Q. Do you recall how many days before the collection of the \$1.50? A. It was not very many days. It was in the same week I believe. I cannot be accurate on that.

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*Harold Straub—For N.L.R.B.—Direct*

Q. Were all of the persons in attendance who signed the original petition? A. For the charter?

Q. Yes. A. Yes.

Q. Were there any other persons there? A. No.

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Q. Were any of the International Officers of the International Brotherhood there? A. No.

Q. Were officers elected at that time? A. They were for the local B-829.

821

Q. Yes. A. Yes.

Q. Were the persons elected at that time, elected to the offices which you have already described? A. They were.

Q. The same persons that you have already described? A. They were.

Q. The persons who had formerly held official positions with the E.R.P.? A. That is right.

Q. Were you elected to any office? A. I was offered an office and I refused it.

822

Q. What office were you offered? A. I was offered the office of member of the executive board, and the man that is now the office manager of Local B-829 told me that if I desired to I could become the chairman of executive board. I was nominated for the executive board and I declined the nomination.

Q. What was the reason for your declination?

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Judge Ransom: I object to that as incompetent, immaterial and in no way binding upon or related to the respondents.

Trial Examiner Gates: You may answer.

Judge Ransom: Exception.



A. I had come to the conclusion that if the I.B.E.W. or any other organization could do the employees of the Consolidated Edison Company any good, the people that were in there, acting in their official capacity and intended to act in an official capacity as officers of the I.B.E.W. certainly were not the people to do the employees any good and I was thoroughly disgusted with the whole affair.

Judge Ransom: I move to strike out the answer as undoubtedly argumentative and improper.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Did that end your affiliation with the I.B.E.W.; is that right? A. Yes sir.

Q. How many days elapsed between your becoming a member of the C.I.O. and that event? A. About two days.

Judge Ransom: Can you fix the date?

Mr. Moscovitz: Will you fix the date of your membership in the C.I.O. Perhaps, if you will look at the calendar that the Examiner is showing

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you, it will help you to fix that date.

A. When I said two days I was wrong—no, I was right, I joined the C.I.O. on Friday evening, May 14, 1937.

Judge Ransom: Is that the date of your application for membership?

The Witness: That is right.

Judge Ransom: You had done nothing about it before then?

The Witness: To join the C.I.O.

Judge Ransom: Yes.

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The Witness: I had given it very serious consideration but had not actually paid any money or became a member.

Q. (By Mr. Moscovitz) Are you an officer of the C.I.O.? A. I am not.

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827

Q. When you say that you became a member of the C.I.O., you mean the United Electrical & Radio Workers of America, an organization which is an affiliate of the C.I.O.? A. Yes.

Q. Is there any local of that organization to which you belong? A. Yes, Local No. 1212.

Q. 1212? A. 1212.

Q. Are you still a member? A. Of it?

Q. Of the local? A. That is right.

Q. You have severed all connections with any other labor organization? A. I have. I have refused to attend meetings that I have been notified were being held.

Q. Did you, before becoming a member of the C.I.O., secure a copy of the constitution and by-laws of the I.B.E.W.? A. Yes, sir.

828

Q. From whom? A. Mr. Charles Hinckley, whose office is at 60 East 42nd Street, the day I went down there to get the cards of the men that had signed.

Q. Was this during your regular working hours?

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A. It was.

Q. While you were pursuing the same practice that you had pursued while you were an officer of the employee representation plan? A. Yes.

Q. Is this the constitution that Mr. Hinckley gave you? (Handing to the witness a document.) A. This is one of the several that he gave me.

*Harold Straub—For N.L.R.B.—Direct*

829

Q. They are all the same? A. Yes, sir.

Q. This constitution is in existence today? A. I believe it is in existence today.

Q. It was in existence at the time it was given to you? A. Yes.

Judge Ransom: Can you fix the date when you got it?

The Witness: May 12th was the day that I collected the \$1.50—I cannot exactly fix it, but I am sure, or almost positive that it was Tuesday of that same week.

830

Q. (By Mr. Moscovitz) Was it the day you got the cards? A. What is that?

Q. Was it the day you got the cards? A. The day that I got the constitutions?

Q. Did you get the constitution the day you got the cards at the office of the local union? A. No, sir—I beg your pardon, that is right. I got the cards the same day.

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Q. That was the day that you went back to 43 Westchester Square and collected this \$1.50 from Miss Mildred Sodergren? A. No.

831

Q. Not that day? A. No, oh, no.

Mr. Moscovitz: I think we had better fix the periods again and get them straight.

Judge Ransom: I think it would be advisable.

Q. (By Mr. Moscovitz) Mr. Witness, I think it would be well for you to fix the periods so that we may have them accurately in the record. A. I went down and went to the office at—the office of Local B-829 at 60 East 42nd St. and went out the following afternoon to 43 Westchester Square to collect the money. I did not

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get the cards and the constitution on the same day that I collected the \$1.50.

Judge Ransom: If you can fix the time there a little more closely I think it would help.

Q. (By Mr. Moscovitz) Fix the date when you received the cards and the constitution. A. May 11th.

833

Mr. Moscovitz: I offer the constitution of the I.B.E.W., the International Brotherhood of Electrical Workers, in evidence. Would you like to see it, Judge Ransom?

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Judge Ransom: Yes.

Mr. Moscovitz: Here it is.

Judge Ransom: May I ask for what purpose this is being offered?

Mr. Moscovitz: The main purpose is to put before the Examiner as part of the proof that the International Brotherhood of Electrical Workers is a labor organization within the meaning of the statute and to also aid in a description of the mechanics of the organization as already described by this witness.

834

Judge Ransom: Is it contended by the government or by the Board that the International Brotherhood of Electrical Workers is not a labor organization within the meaning of the Act?

Mr. Moscovitz: No, it is not contended by the Board that the I.B.E.W. is not a labor organization within the meaning of the statute.

The only position that the Board takes in this case is that the company, through its activities with the International Brotherhood of Electrical



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Workers, has continued a practice of which in substance and in effect results in a continuation of the principles of company unionism without giving its employees in any respect an opportunity to make a free choice of what kind of representation they would like to have.

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If Judge Ransom will consent to that, then I will withdraw it.

Judge Ransom: Is it the statement on behalf of the Board that it is directing this complaint against the I.B.E.W.?

836

Mr. Moscovitz: No, it is not the position of the Board that this complaint is directed against the I.B.E.W.; it is directed against the Consolidated Edison System, but it becomes necessary, in the proceeding on this issue, to develop certain facts and circumstances concerning the relationship between the company and the I.B.E.W.

Judge Ransom: May I ask if the Board contends that any issue of representation is involved in this proceeding?

837

Mr. Moscovitz: There is no issue of representation involved in this proceeding.

Judge Ransom: You stated before that was your main reason. Is there any other reason for which this exhibit is offered?

Mr. Moscovitz: No, that is all, Judge Ransom. I place no great reliance upon the introduction of that exhibit.

I am perfectly glad or will be perfectly glad to withdraw it because my case does not stand nor fall on the introduction of that exhibit. If

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there is any question at all, I will withdraw it. It is something I felt the Board probably would

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be interested in, that is, to see the constitution and by-laws of the I.B.E.W., and also to see the constitution and by-laws of the United Electrical & Radio Workers, so that the Board would be in a position to determine that we have here a labor organization within the meaning of the statutes.

839

My case is not dependent whatsoever upon the introduction of the exhibit. If there is any question in your mind about it I will be glad to withdraw it.

Judge Ransom: I understand that it is not contested by the Board that the I.B.E.W. is a labor organization within the purview of the act.

Mr. Moscovitz: There is no question in connection with that. There is no question in my mind that the I.B.E.W. is a labor organization within the meaning of the statute. The I.B.E.W. is a recognized organization affiliated with the American Federation of Labor. It so happens: unfortunately in this case, that certain, a certain local or locals of the I.B.E.W. have become in matter of operation extensions of the old company union in such a way that we have a direct interference with the organizational activities of the system employees.

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Judge Ransom: Upon that statement I now make objection that the complaint in this case and the charges in this case present no such issue and no such issue is, by any paper in this case,

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up to this moment, been brought to the attention of any of the respondents.

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The complaint does not refer to any or in any way relate to the former representation plan adopted by the employees which is now referred to as a "company union"; the complaint and charge in this case are in no way related to or directed against any local unions of the I.B.E.W.

The issue which is now tendered is an issue upon which no notice of hearing has taken place.

Trial Examiner Gates: I take it we are proceeding on the complaint.

Mr. Moscovitz: We are proceeding on the complaint and I do agree with Judge Ransom, Mr. Examiner, that there is no 8-2 allegation in this complaint. It is my position, and if I am wrong, it will be pointed out, that the testimony which is being given which supports the statement which I made— 842

Trial Examiner Gates: Do you say there is no 8-2 allegation?

Mr. Moscovitz: No, the testimony is testimony which goes in support of the interference allegation in the complaint, which is to be considered with other testimony that is to be elicited in this proceeding. 843

Trial Examiner Gates: It does not seem to me that this is pertinent at this point. The ques-

S. M. 193

tion here is whether Mr. Moscovitz wishes to continue the urging of the admission of his offer, and whether Judge Ransom wishes to object to it.

Judge Ransom: I object to it on the grounds stated and I might point out that it is in no way binding upon the respondents. It is in no way within the complaint and charge, and I make the

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further point specifically that it is stated to be offered in behalf of an issue which is not tendered by the complaint, of which there has been no notice of hearing and as to which, if the issue is offered or were offered upon proper complaint, necessary parties are not before the Board or the Examiner.

**Trial Examiner Gates:** Can it be stipulated that the I.B.E.W. is a labor organization within the meaning of the statute?

845

**Judge Ransom:** Well, as far as the respondents are concerned, we have recognized the I.B.E.W. as a labor organization entitled to bargain with the respondents in behalf of such of their employees as are members of the I.B.E.W. As a matter of fact, these companies have had a contract with the I.B.E.W. for many years. We are not contesting the status of the I.B.E.W. as a labor organization under the Act. It is this sudden and surprising contest in behalf of the government against the locals of the I.B.E.W.

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which are not before the proceeding, are not before the Board, and the tendering of an issue which is certainly not within the complaint and charge.

**Trial Examiner Gates:** If there is to be further argument on this point, which does not seem to me material at this time, and you may proceed, but we will go off the record. The point which has been before us actually is, whether either party contests that the I.B.E.W. is a labor organization.



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Mr. Moscovitz: I do not think there is anything mysterious about my statement, and I do not see at all where it goes beyond any of the allegations in the complaint. I did not mean to confuse the issues in this proceeding by giving any one the impression that we were proceeding in support of the company union allegation. The testimony is in support of an interference allegation.

Now, so long as Judge Ransom, in effect, states that the company, the respondent, recognizes the I.B.E.W. as a labor organization, if we can agree by stipulation that it is a labor organization, within the meaning of the statute so that we are in no issue on its standing, I withdraw the exhibit.

848

Judge Ransom: The point that I am trying to make is this, and it seems to me there is tendered here definitely an issue on which there has been no complaint or notice of hearing. I assume—

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Trial Examiner Gates: We are proceeding on the complaint as it is in the record.

849

Judge Ransom: We are proceeding on the complaint, and that complaint does not in any way challenge or attack the I.B.E.W.—

Trial Examiner Gates: I am wondering here if there is not some confusion as between you two. It is quite customary in Board hearings to introduce a copy of a constitution and by-laws of any labor organization that is involved for the purpose of showing that it is a labor organization within the meaning of the statute. If that

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is the purpose of Mr. Moscovitz, it seems to me that there is a misunderstanding between the two of you on that point.

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Judge Ransom: I concede, of course, great unfamiliarity with matters in this new field, but I do think there is a little more involved here than just this question of whether this particular pamphlet be placed in evidence because this pamphlet is only a cumulative disclosure of an attitude or a contention on the part of the Board which I do not believe is in this complaint, and on which there has been no notice of hearing or no service of necessary parties.

Over my objection yesterday and today, especially today, your Honor has admitted a great

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deal of testimony of a hearsay character, in no way related to the respondents or any of their officers or supervisors. For what purpose? For the purpose which has been stated here in behalf of the Board, namely, that they are endeavoring to attack the International Brotherhood of Electrical Workers and various of its local unions, within the city of New York and Westchester County, not on the ground that they are not supposed to be a labor organization, but that by the acts of their officers, members and employees, they have become not a labor organization entitled to the protection of the National Labor Relations Act, in the event that it is finally held that the National Labor Relations Act is applicable to any of these respondents as employers.

Now, we say that issue is not here. We say that all this evidence that has been received this

morning over our objection is unrelated to any issue which is tendered by this complaint on which there has been any notice of hearing.

Mr. Moscovitz: Mr. Examiner, I cannot stand by and permit Judge Ransom to remove from the shoulders of the company its responsibility under this complaint, by placing it on the shoulders of the I.B.E.W., so that the issues here become confused. This is not an action, and I would like to make this clear, against the International Brotherhood of Electrical Workers. 854

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This is an action against the Consolidated system because of its discharge of certain employees, and because, by this discharge of certain employees and other acts, it interfered with the organizational activities of its employees. I think that is very clearly stated in the complaint, and I submit the testimony that is being elicited through this witness, and that will be elicited from other witnesses similar in vein to that which this witness has given, is in support of the allegations of the complaint. 855

I do not see, however, that there is any necessity at this point to become involved in further argument on that question. Now, I am perfectly willing to withdraw this exhibit that precipitated this argument. I recognize and agree, if Judge Ransom will stipulate, that the International Brotherhood of Electrical Workers is a recognized labor organization affiliated with the American Federation of Labor, within the meaning of the statute.

Now, if for the Consolidated System who had

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recognized the I.B.E.W. or having recognized the I.B.E.W., there can be no question about the entrance of a stipulation on that point.

Judge Ransom: The point that I make, sir, is, I do not want to prolong this argument, and the point is: Of course, the respondents are not contesting that the I.B.E.W. is a labor organiza-

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tion entitled to the protection of this statute, if this statute is applicable to the respondents as employers, but the point is that by this persistent course of testimony, offered under a complaint which relates principally to the discharge of five, and now, six employees, there has been a persistent offer and receipt of testimony which is devoted to an attack upon the status of the I.B.E.W. and its numerous locals in this general neighborhood, as a labor organization entitled to the protection of the Act.

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If these things were true, the I.B.E.W. would not be entitled to that status. I take it that would be the conclusion which would be drawn and urged.

Now, so far as we are concerned—

Trial Examiner Gates: Just a moment, please. So far as the Act is concerned, as I understand it, a company union or any other independent union is a labor organization. Now, that is the only thing that is at issue here. If both parties admit that the I.B.E.W. is a labor organization, it seems to me there is no point of further discussion.

Judge Ransom: I submit, sir, that under the Act, as I read it—I do not claim to read it with



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great confidence or certainty—but a labor union may lose its status as a labor organization or an employees' organization entitled to the protec-

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tion of the Act, by certain acts or practices. Now—

Trial Examiner Gates: Just a minute, please. I think we had better go off the record.

(Discussion off the record.)

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Trial Examiner Gates: I will reserve decision.

Mr. Moscovitz: I will withdraw the exhibit, Mr. Examiner.

(Exhibit withdrawn.)

Trial Examiner Gates: Let it stand as it is.

Judge Ransom: But the point that I have made with respect to the nature of the proof that has been offered through this witness is not withdrawn, because if anything this witness has said relates to an issue of the discharge of five, now, six employees, I think my few years of practice have been worthless in so far as being able to listen to and appraise testimony.

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Trial Examiner Gates: I will ask Mr. Moscovitz to look at Board Exhibit No. 1 and state whether or not a copy of the complaint therein is the one under which we are proceeding.

Mr. Moscovitz: Yes, it is.

Trial Examiner Gates: There are certain markings there which are not clear to me.

We will recess for five minutes.

(Whereupon, a short recess was taken.)

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## AFTER RECESS

Mr. Moseovitz: Mr. Examiner, on the direction that you made to me immediately before recess, may I reserve making certain references, or pointing out certain allegations to you until this afternoon? Judge Ransom has a copy of the complaint which I would like first to compare with the complaint which is in Board's Exhibit No. 1 before answering your question.

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Judge Ransom: That is agreeable to the respondents.

Trial Examiner Gates: Very well.

Q. (By Mr. Moscovitz) Since becoming a member of the C.I.O., Mr. Straub, have you continued along the same lines that you did when you were a member of the employee representation plan and the I.B.E.W.? A. No, sir, I have not.

Q. Do you now work exclusively at your regular job? A. I am now working as a cable splicer for the Consolidated Edison Company, yes.

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Judge Ransom: I move to strike out the answer as not responsive.

Trial Examiner Gates: Read the question and the answer, please.

(Question and answer read.)

Trial Examiner Gates: It may be stricken.

Q. (By Mr. Moscovitz) Up until what date were you

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employed by the company as a lineman? A. The week ending May 15, 1937.

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865

Q. Yes, and after May 15, 1937, was there a change in your employment? A. There was.

Q. What was the change? A. I was transferred from line work to cable splicing.

Q. By whom was that transfer made? A. The transfer was ordered by Mr. E. E. Hill, assistant general superintendent of the departments that I have enumerated before.

Q. And at that time were you a member of the C.I.O.? A. I was.

Q. Were you active in the C.I.O.? A. I was.

866

Q. In what regard? A. The day before I joined the C.I.O. and, in fact, for quite some days before I joined the C.I.O., I had been giving it thought and I had been telling the people in and around the place that I was working on Purdy Street, that in my opinion they made a mistake and they would make a mistake if they went along with Local 829 of the I.B.E.W., therefore I thought they should join the C.I.O.; that I intended to do it, which I subsequently did. And I was very active and forceful in explaining to every one I got in touch

S. M. 202

867

with that the C.I.O. was the organization they should get in touch with.

Judge Ransom: Will you fix the date when you did and said these things.

The Witness: The date is hard to fix. I can name the entire week, and the entire time that I was a member of the I.B.E.W. I never believed that it was the right organization. I joined it, trying to fix in my mind, trying to pick a point in their organization that I thought would be useful.

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*Harold Straub—For N.L.R.B.—Direct*

Trial Examiner Gates: Fix the date.

The Witness: The entire week from May 10th to May 14th I was active, before I joined the C.I.O., and the date that I joined the C.I.O.

Q. (By Mr. Moscovitz) Yes, and have you since becoming a member of the C.I.O. attempted to secure membership for the C.I.O.? A. I have.

Q. Do you do that during working hours or after working hours? A. I do it after working hours.

869

Q. And this change came about from lineman to cable splicer, was that at your own request, or was it— A. No, it was not at my request.

Q. Does it put you on different location than you would be on as a lineman? A. Very definitely so.

S. M. 203

Q. Where would you be on location as a lineman, do you know? A. I would be working in the Bronx, and I mean by the Bronx, the East or West Bronx.

Q. Is that in your home area? A. Yes, it is.

870

Q. Where would you be, where are you, rather, as a cable splicer? A. I am now working in what is known as I-2, meaning installation two, covering the area between 59th Street and 100—I am not exactly sure how far it goes. It doesn't go into the East Bronx. It goes into the West Bronx, covering the East River to the Hudson River.

Q. Is that out of your home area? A. Very definitely so.

Q. Did you do anything about the transfer in the nature of protest, or did you inquire as to why you were being transferred? A. I was notified at six o'clock in the evening after I had completed my day's work as a lineman, that I was to report to 41st Street,



*Harold Straub—For N.L.R.B.—Direct*

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708 First Avenue, and 41st Street, the following Monday morning.

When I reported to the man that I had been told to report to, I asked if I could speak to Mr. E. E. Hill, and he told me that Mr. Hill was too busy, that he would

S. M. 204

let me know some time later when I could see him.

Q. Did you see him? A. Yes.

Q. When? A. Friday of that week.

Q. What date? A. I reported out on the job on the 17th, the 21st of May, 1937.

872

Q. Did you ask him for the reason for the transfer?

A. I did.

Q. What reason did he give you? A. He went into a very long descriptive story of the fact that there wasn't any work for the employees of the Consolidated Edison Company, especially in that particular department. He said that they had been scraping the bottom of the barrel for the last seven years looking for work for the employees to do; that they were transferring employees all over the system. He pointed out that they were transferring several supervisors from Queens to New York and other supervisors from New York to Queens.

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He went on to add that in looking up my record they had discovered that at one time or another I had done cable splicing and that therefore they had decided to transfer me as a cable splicer in order to find out how much mechanically I would be worth to the Consolidated Edison Company.

S. M. 205

Q. Had you done cable splicing before? A. Three years before.

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*Harold Straub—For N.L.R.B.—Direct*

Q. Yea. Is it different kind of work? A. Yes.

Q. Is it lighter work or heavier work, any different?

A. It is perhaps a more technical job. It requires slightly more skill. The manner in knowing how to wipe a joint is important, the manner of knowing how to handle hot lead. It is definitely a different type of work, a type of work that is not assigned to a lineman.

Q. And have you continued at that job since your transfer? A. I have.

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Q. Well, was there a let-down of lineman work for you immediately before the transfer? A. No, sir, there was not. There was a let-down of cable splicing throughout the entire system.

Q. But not of the linemen work? A. No, sir.

Q. Do you know whether or not there had been since your transfer an expansion of lineman work? A. There has not been an expansion. There is a definite area that the Consolidated Edison has taken over that was formerly served by the Westchester Lighting Company that is being reconstructed, poles being set up there. There are more poles to set than they have men enough to put

876

S. M. 206

on these poles to change them. The poles have been standing there for several weeks. There are poles set up in the Bronx area that have been waiting for the opportunity to change them over for the last two months.

Q. Did this transfer take you away from men with whom you had regularly and ordinarily come in contact? A. Yes, it does.

Q. So that you now find yourself with entirely new working associates? A. Employees that I had never met before.

Q. Did you testify that since your change to cable splicing work there has been a decrease in cable splicing work? A. Both before—

*Harold Straub—For N.L.R.B.—Direct*

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Judge Ransom: Objected to. The witness has not shown that he knows anything about it.

Q. (By Mr. Mosecovitz) Do you know whether or not there has been a decrease in cable splicing work? A. Yes.

Q. How do you know that? A. From Mr. Hill's statement to me, from the transfer of hundreds of cable splicers all over the system from their regular jobs as cable splicers to stokers in Hell Gate, and at different generating plants in the system, to dusting the docks at the waterside edge, competent cable splicers who have been doing that for years.

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S. M. 207

Q. Do you know whether or not there has been the same change among linemen? A. The only other lineman that I know that has been transferred has been assigned to report July 6th as an assistant at a substation. He has just been transferred recently.

Q. How many linemen are there? A. Oh, there are over 50.

Q. In your company? A. Yes, I believe. In the Consolidated Edison System there are, of course, many more, but in the particular group I was working with there are over 50.

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Q. Do you know approximately how many there are in the system? A. There must be hundreds. I couldn't accurately say.

Q. Have you since—

Judge Ransom: I move to strike out all of this testimony in relation to transferring, on the ground that it is not within the issues presented by the complaint.

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*Harold Straub—For N.L.R.B.—Direct*

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Have you since your transfer and since becoming active in the work of the C.I.O., noticed whether or not any foremen or supervisory employees have taken steps to secure membership of their employees in the I.B.E.W.?

Judge Ransom: I object to the question as al-

S. M. 208

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together vague and indefinite and not probative.

Trial Examiner Gates: Objection overruled.

A. Yes sir, I have.

Q. When? A. The first Friday I worked as a cable splicer.

Judge Ransom: Can you fix that date?

The Witness: I can.

Judge Ransom: If you will.

Q. (By Mr. Moscovitz) Was that May 21st? A. That's right.

382

Q. Yes. A. That morning, the date is particularly fixed in my mind because due to the fact that after attempting to see Mr. Hill all week, finally I succeeded in seeing him Friday morning. I reported back on the job and it was on 132nd Street and Lenox Ave. Incidentally, I had been assigned to work for the man who was to break me in all over again as a cable splicer, irregardless of the fact that there were cable splicers accessible all over the city if they needed one. Then the foreman came out and collected from each of the two men that I was working with their \$1.50 initiation fee. He came back later in the afternoon and gave them receipts from the I.B.E.W. for their \$1.50 in addition to



that, giving them circulars, telling them of the set-up in the I.B.E.W., who the president was and who the vice-president was and who the officers were, and so forth.

S. M. 209

Q. Did you see that? A. I did.

Q. Who was the foreman? A. Mr. McCarthy.

Q. Any one else? A. The two men I was working with, the men he collected the money from, from Mr. Shillinger and Mr. W. Winkler.

Q. In your presence was this? A. Yes.

Q. And did this foreman sign any receipt stubs? A. He didn't sign any stubs. He brought the stubs back to these people after they had given the \$1.50 to him. They were signed by somebody else.

Q. Who were they signed by? A. A man by the name of Callahan.

Q. Do you know who Callahan is? A. A former council member of the street department of the old general council of the Consolidated Edison Company.

Q. That's all.

Judge Ransom: I understand that it is agreeable to you, in view of the situation on the complaint, that I shall hold my cross-examination until this afternoon.

Trial Examiner Gates: There are one or two questions I would like to clear up.

S. M. 210

*EXAMINATION by Trial Examiner Gates:*

Q. (By the Trial Examiner) Do you know, from your experience in the I.B.E.W., whether foremen are eligible for membership in Local B-829? A. As I understand it, everybody, with the exception of those peo-

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*Harold Straub—For N.L.R.B.—Direct*

ple who have not got the right to hire and fire, and employ, is eligible in Local 829.

Q. So, foremen would be eligible if they do not have the right to hire and fire? A. That's right.

Mr. Moscovitz: May I interrupt to ask that the question be read?

(Question read.)

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Q. (By the Trial Examiner) You stated some time yesterday afternoon that you had made a request to Col. Stillwell that you be transferred out of the Bronx. Was this transfer on May 15th as a result of that? A. No, sir. The request I made of Col. Stillwell was not that I be transferred out of the Bronx, but that I be transferred out of the particular department that I was working in.

Judge Ransom: Out of what department?

The Witness: Out of the department that I came under the supervision of Mr. E. E. Hill.

Judge Ransom: What department would you—

888. S. M. 211

The Witness: That would include the overhead and underground construction, distribution and transmission department of the Consolidated Edison Company.

Judge Ransom: What department did you want to be transferred to?

The Witness: I didn't care what department, as long as I got out of that department.

Judge Ransom: What date was that you asked for that transfer?

The Witness: The afternoon of Tuesday,

*Harold Straub—For N.L.R.B.—Direct*

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April 20th, the day that Mr. Carlisle announced the recognition of the I.B.E.W.

Judge Ransom: What date was your transfer made?

The Witness: I was notified of the transfer May 14th. The actual transfer took place the following Monday.

Q. (By Mr. Moscovitz) When you say it was the date Mr. Carlisle announced the recognition of the I.B.E.W., what are you referring to? A. I refer to the morning, the day of Tuesday, April 20, 1937, the joint meeting that was held between Mr. Carlisle and the members of the management and the various chairmen of the different general councils. I stated that before Mr. Stillwell left the room that morning, or as he was about to leave it, I asked for an appointment with him that day.

890

S. M. 212

Judge Ransom: That was the afternoon that you wanted to be transferred to some other department?

The Witness: I said to Mr. Stillwell would he please set the necessary wheels in motion to have me transferred out of the department that I was in.

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Judge Ransom: That was the department in which you were then working as a lineman?

The Witness: I worked as a lineman, although that department specifically covered overhead and underground.

Judge Ransom: You went to a cable splicer's school, didn't you, or something like that?

The Witness: I did, for eight years.

Judge Ransom: I will wait until we clear up this other issue.

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*Charles A. Smith—For N.L.R.B.—Direct*

Mr. Moscovitz: Judge Ransom, do you have any objection to my calling the discharged persons at this time, also the amended discharged witnesses?

Judge Ransom: No, that is what I supposed this complaint was about until this morning and yesterday.

I am reserving until the situation on the complaint is worked out both cross-examination and motions.

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CHARLES A. SMITH, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination:*

S. M. 213

Q. (By Mr. Moscovitz) What is your full name, Mr. Smith? A. Charles A. Smith.

894

Q. Whom are you employed by at the present time? A. No one at present, sir.

Q. You are unemployed? A. Unemployed, yes.

Q. By whom were you last employed? A. The Railway Audit & Inspection Company.

Q. And what is the business of the Railway Audit & Inspection Company? A. Called a detective agency.

Q. Where is that company located? A. Nationally located.

Q. Does it have an office in New York City? A. Yes.

Q. How long were you employed by the R. A. & I.?

A. The last time, the Spring of 1934 until the Spring of—the middle of the summer of 1935.



*Charles A. Smith—For N.L.R.B.—Direct*

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Q. Were you employed through the New York office of the R. A. & I? A. Yes.

Q. Were you ever employed through any of the other offices of the R. A. & I? A. New York and Boston.

Q. Was it always an employment through the New

S. M. 214

York City office and then a transfer to the Boston office, or did you become employed directly at the Boston office? A. That is what I had, a transfer from New York to Boston.

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Q. When you say that you worked for R. A. & I until the middle of the summer of 1935, can you fix a little better the date for our purposes? A. May, I think it was.

Q. May, 1935? A. Yes, something like that, around May.

Q. All right, and what was your job with the A. R. & I? A. I had various jobs there, detective work they call it, detective work.

Q. Did you act as an under-cover operative? A. Yes.

Q. Can you give us some description of what your work entailed? A. Well, I was covering union activities in one union and there is men that belonged to other unions.

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Judge Ransom: I cannot hear anything the witness is saying.

Trial Examiner Gates: Will you speak a little louder, please?

(Last question and answer read.)

S. M. 215

Q. (By Mr. Moscovitz) Did you work under instructions from an R. A. and I official? A. Yes.

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*Charles A. Smith—For N.L.R.B.—Direct*

Q. Who was the R. A. and I. official who gave you your instructions? A. Foster Strader.

Q. Is he in this room today? A. Yes.

Q. And what is his official position with the R. A. and I.? A. Well, I have always taken him as the New York manager.

Q. Is he the person whom, so far as you know, is in charge of the New York office? A. Yes.

Q. Is he the person who always gave you your instructions? A. Yes.

899

Q. Did you at any time, while employed by the R. A. and I., receive instructions to do any work in the Consolidated system? A. Yes.

Q. And do you recall what company or affiliate of the system you were instructed to work in? A. The Gas Company, out in Astoria.

Q. In Astoria? A. Yes.

Q. Do you recall the full name of the company? A.

S. M. 216

Queens Gas and Electric, if I am not mistaken.

900

Q. Is that the New York and Queens Electric Light and Power? A. It is an affiliate, I imagine. All I know is the gas company is out on the river front there in Astoria.

Q. Long Island? A. Yes.

Q. Now, did Mr. Strader give you any particular instructions as to what you should do while working as an undercover agent in the Consolidated System? A. Yes, he give me a card, with a picture of a man on it, a company card, to take a look at that man, go out and pick him up at the gate, take him home, see where he went at night time, what union halls he went to, pick him up the next morning, take him to work, pick him up at dinner time, take him home, spend the whole day and

take him to town at night time, make reports on what halls or meetings he attended to, anything like that.

Q. Did you, while doing that—this work, work as an employee of the company? A. No, sir.

Q. And when Mr. Strader told you to pick him up, or pick this person up, did it necessitate your actual meeting the gentleman or did you just follow him? A. Just followed him.

Q. Were you supposed to follow him so he wouldn't know he was being followed? A. Yes.

S. M. 217

Q. Did you trail him wherever he went? A. Yes.

Q. Who was the person whose picture you received whom you were to trail? A. Mr. Solosy.

Q. Is he here today? A. Yes.

Q. Which gentleman is he? A. The boy here with the glasses.

Q. Is that Solosy? A. I forget how you spell it.

Q. Is that Mr. Stephen Solosy? A. Yes.

Q. How long did you trail Mr. Solosy? A. I don't know exactly the amount of days. I would be on a couple of days, two days, three days, then off on something else and then back on the job again. I imagine probably eight or ten times at most, maybe under that amount. I didn't make any check of it to see.

Q. During what period of time? A. I think that was during March and April.

Q. 1935? A. 1935, yes.

S. M. 218

Q. And were you given any particular instructions as to just what to do regarding Mr. Solosy's activities?

A. Well, to see the people he met, whom he had meetings with, if he went to any union activities, meetings of

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*Charles A. Smith—For N.L.R.B.—Direct*

any kind, any union halls, or anything pertaining to union activities.

Q. Was Mr. Solosy attending union meetings during that time?

Judge Ransom: Objected to. Witness has not shown that he knows.

Q. (By Mr. Moscovitz) Do you know whether or not Mr. Solosy attended union meetings during that time?

A. Well, he went to one one night.

905

Q. Where? A. I don't know if it was a union meeting. There was quite a few men on Irving Place or Irving Place, some friend of his, some friend's apartment. They had a meeting of some kind there, so I imagine it was a union meeting.

Q. Is that where you reported it to Strader? A. Yes.

Q. Did you report to Strader that it was a union meeting? A. I don't recall whether I did or not.

Q. Did you report to Strader that Mr. Solosy had attended a meeting? A. A meeting, yes.

Q. Did you report that it was a union meeting? A.

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S. M. 219

I can't say whether I did or not. I might have said there was quite a few men there that went into that.

Q. Did you make any other report to Mr. Strader? A. Where he went and what time he got there and what time he went home, what time he went to work, what time he went to lunch, what time he knocked off from work, what time he left his house to go out in the evening, his whole actions for the day.

Q. Were your reports on Mr. Solosy to Mr. Strader in writing or over the telephone? A. In free hand.

Q. In free hand? A. Yes.



*Charles A. Smith—For N.L.R.B.—Direct*

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Q. Writing? A. Writing.

Q. Did you sign your reports to Mr. Strader under your regular name or did you have an operative's number? A. I had an operative's number, that was the heading, and sometimes I would sign my name and sometimes I would not.

Q. Were there any other operatives that worked with you during that period of time? A. Three or four others.

Q. Three or four others? A. Yes.

Q. Do you know whether or not these operatives were under instructions to shadow Mr. Solosy too? A. Yes,

908

S. M. 220

two of them were, yes, because they got instructions the same time as I got mine.

Q. Who were they? A. One of them was Brown, William Brown.

Q. Who is he? A. He is an operative for the R. A. and I. I believe he is still working for them.

Q. Is he the gentleman who was arrested in Albany in connection with election frauds? A. Yes, for election frauds.

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Judge Ransom: Objected to, and I move to strike it out as wholly immaterial and deliberately prejudicial.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Was his work done in connection with your own at the same time that you were shadowing? A. Yes, at the same time with me.

Q. Did you split up your time or did you work together? A. Well, we took spells.

Q. Did he continue working for the R. A. and I. and

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*Charles A. Smith—For N.L.R.B.—Direct*

trailing Solosy after you left the employ of R. A. and I.  
A. To my knowledge yes.

Q. How about other persons, how about the other man? A. Well, I don't know his name, Ralph Golden.

S. M. 221

Q. Who is he? A. I don't know what he is.

Q. Well, did you ever hear of Ralph Golden before?  
A. Oh, yes.

911

Q. In what connection? A. Well, he handled a lot of jobs when there were strikes and I understand he worked on a carline job a few years ago for the R. A. and I. He was on this job in Jersey City where he shot a fellow over there.

Q. On the Pulaski Highway? A. The Pulaski Skyway.

Q. How long did he work with you? A. Well, it was only two nights that I met him. He was following Mr. Solosy's side kick, I think.

Q. Who is that? A. Ewing, I think.

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Q. What was Ewing's job at that time? A. Ewing was in the Newark Gas Company, not in the Astoria, the Newark, but he lived on Irving Place, Ewing did, and Solosy used to go from his house to Ewing's house at night time. They would meet there and go out wherever they went.

Q. Did you submit daily reports on Solosy to Mr. Strader? A. When I worked on him, yes.

Q. Did you ever submit reports to anyone in the company on Mr. Solosy? A. No, I carried reports to the company.

S. M. 222

Q. To whom? A. To the Edison Branch in Brooklyn, and the one on 14th Street.

Q. To whom? A. To Parker and the head of that secret service over there, whatever they call it, in Brooklyn.

Q. What was his name? A. I don't recall his name.

Q. Were they reports that you carried to these men which were given to you by Mr. Strader? A. They were reports I imagine on all the employees at different times, because the R. A. and I, I understand from two other operatives, were working on the Brooklyn end.

Q. Do you know whether or not the reports that you carried were also reports concerning Solosy? A. I wouldn't say that because I didn't open the package and read them. It was a sealed package. 914

Q. Do you know whether or not you ever carried R. A. and I. reports to the president of the company? A. Well, there was one man I carried reports to, I couldn't get in to see him, but I gave it to his secretary, I thought. I was told to give it to him. I think it was on the 14th floor, or something, down here in 15th Street.

Q. Was that the Mr. Parker to whom you referred?

S. M. 223

A. I was down there two or three times. 915

Q. Was that the Mr. Parker to whom you referred?

A. There was Parker and some other man. I forget his name.

Q. Who were these other two men that worked with you? A. I only know one by the name of Izzicks. I don't know his first name. The other fellow I only know his first name, Joe.

Q. Up until what time did they work for the R. A. and I. in the system? A. They were there when I left.

Q. And you left in May, 1935? A. Yes.

Q. They were there when you left? A. Yes.

Q. When you sent the reports to Mr. Strader in long

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*Charles A. Smith—For N.L.R.B.—Direct*

hand, would you send them to his office or to a post office address? A. Sometimes I wrote them out in the office in the morning, sometimes I would send them to the post office address.

Q. Was that the post office address in the Grand Central? A. Annex.

Q. Grand Central Annex? A. Yes.

Q. Do you recall the box number? A. 123.

Q. Did you, outside of making reports on Solosy, make reports to Mr. Strader concerning the general

917

S. M. 224

union activities of the employees in that company?

Judge Ransom: Objected to as wholly vague and improper in form, leading, calling for a conclusion.

Trial Examiner Gates: It may be answered.

Judge Ransom: Exception.

A. I didn't make any report on the general activities.

Q. (By Mr. Moscovitz) Have you worked for R. A. and I. since? A. No sir.

918

Q. Have you been called to work for R. A. and I. since? A. No sir.

Q. Have you worked for any other detective agency since? A. Yes, I worked for two, three.

Q. In this company? A. No, not in the R. A. and I.

Q. Did the work for any of these other detective agencies carry you into the Consolidated system, is what I mean? A. No sir.

Q. What agencies were they? A. A. and L. Smith and Connellen, O'Connor and one fellow I worked for by the name of Irish Williams. He has a license but no office.

Q. How long have you been doing this kind of work?

A. Since 1927.



Q. Since 1927? A. Yes.

S. M. 225

Q. How long had you been employed by R. A. and L., outside of this period when you were in the Consolidated system? A. I was with them for a year and some months before, in 1928.

Q. In what capacity? A. In investigating union activities in Boston.

Q. Your work always concerned securing information regarding union activities of employees?

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Judge Ransom: Objected to as leading and in no way binding upon the respondents.

Trial Examiner Gates: Objection sustained.

Judge Ransom: May the answer be stricken out?

Trial Examiner Gates: It may.

Q. (By Mr. Moscovitz) That is all.

#### CROSS EXAMINATION:

Q. (By Mr. Ransom) Now, when did you say that your work for the railway and Audit Company first brought you into any duties that related to the Gas Company in Astoria? A. March and April.

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Q. You are not able to fix the date more definitely? A. No, I did not keep any record of it after I turned in my reports.

Q. You were instructed by Mr. Strader to follow at night and at noon a man named Solosy? A. Yes.

S. M. 226

Q. Do you know what department of the company he was in? A. Yes, he was in the laboratory, the Gas Company in Astoria.

*Charles A. Smith—For N.L.R.B.—Cross*

Q. In the chemical department in Astoria plant, do you mean? A. I never was in the plant, I couldn't say if it was chemical. I got his description off of a gas company card with a picture and it stated the man was a laboratory worker, but he might have been sweeping up in there. I didn't go in there.

Q. You don't know what work he did in the department? A. I understood he was—what do you call it—well, like a pharmacist. In other words, he mixed some kind of stuff up down there, a chemist of some kind, or an assistant chemist.

Q. Now, you say you followed him somewhere around ten different occasions? A. I said no more than ten, and probably less, but very little less.

Q. Not continuously during that time? A. No, I had other days, so that, you see, if one man goes after one man all the time, he might get wise to him, so they take you off.

Q. But you reported what you found that he did? A. Oh yes.

S. M. 227

Q. Were you given any instructions as to why you had been assigned to this man? A. Well, the only thing I knew was that he was a union man and we was always instructed to watch the union men and see what activities they had, and find out if he was an officer if we could, of the union.

Q. Do you know of any union of which he was a member? A. No.

Q. You spoke of following him to a meeting at some house where there were other men? A. Yes.

Q. Where was that? A. Irving Place, I don't know the number, but I could take you right to the house.

Q. You don't mean the company office? A. No, it

is above that, more toward the park, it would be between 17th and 18th Street or 18th and 19th Street on the west side.

Q. Some private residence? A. Yes, restaurant in the cellar.

Q. Did you go into the house? A. No.

Q. But you saw various men go upstairs? A. Yes, they went upstairs to this fellow's room where we could look through the window and they had a light on, they

S. M. 228

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had the curtain up.

Q. And when did this following of Mr. Solosy cease; do you know? A. The exact date I do not know.

Q. But it was not later than April of 1935? A. I couldn't say that but I asked to get off it, to be candid with you, I said I wanted to get off it because the man is wise to me because I didn't like the job out there from six in the morning until this fellow had done at night at eleven o'clock for one day's pay.

Q. But in any event you had nothing to do with it until some time in April of 1935? A. No, I did not.

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Judge Ransom: I move to strike out the testimony of this witness completely on the ground that the complaint and the charge here relate solely and exclusively, as it must to any employment of operatives since the taking effect of the Act. The Act went into effect July 5th, 1935. Anything prior to that, even if the Act were applicable to the respondents as employers, would not be a matter within which this Board would have power or jurisdiction to inquire.

Trial Examiner Gates: Motion to strike is denied.

Judge Ransom: Exception.

928

*Foster Strader—For N.L.R.B.—Direct*

In view of the fact that this Board could have no jurisdiction, that even if the Act were applicable to the

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respondents there were no provisions of law under which this proof was made in effect before July 5th, 1935, I have no further cross cross examination and stand upon my motion to strike.

Trial Examiner Gates: You may be excused.

929

(Witness excused).

FOSTER STRADER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination:*

Q. (By Mr. Moscovitz) Mr. Strader, are you employed by the R. A. and I? A. The Railway Audit and Inspection Company, Inc., yes.

930

Q. In what capacity? A. Assistant manager.

Q. How long have you been employed by that company? A. Since 1917.

Q. In the same capacity? A. No, various capacities.

Q. What capacities? A. Well, I started there as an investigator then went in as an office boy, then assistant to the manager, and district manager for the last two years.

Q. Are you also an officer of the R. A. and I? A. No sir.

Q. When you went with the company in 1917, you went with them as an investigator? A. Yes.



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Q. You heard the testimony of Mr. Charles Smith who preceded you? A. Yes.

Q. Was your work as an investigator the same kind of work that you did while you were employed by the R. A. and I? A. No, I worked on about one job, that was during the war in connection with some sabotage by the Germans of a harness factory. The Germans were trying to commit or had committed sabotage on a harness factory.

Q. Have you ever done the kind of work that Mr. Smith described while he was on the stand? A. I have done some shadowing work, yes sir. I have done some shadow work.

Q. Regarding labor organizations? A. Yes sir.

Trial Examiner Gates: Will the witness please speak up a little louder so that the reporter may put down what he is saying. It is necessary for you to talk sufficiently loud for him to hear you.

The Witness: I beg your pardon, sir, I will do so. It was very little, but it probably—it was.

Q. (By Mr. Moscovitz) What was that? I asked you if you had ever done anything—any kind of work that

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S. M. 231

Mr. Smith described while he was on the stand regarding labor organizations; the type of work that he had reference to? A. Although it was very little, probably it was, yes.

Q. You are not sure? A. No, I just helped out occasionally when they were short-handed.

Q. Does your office, or did your office do that kind of work? A. We do and did shadow work.

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*Foster Strader—For N.L.R.B.—Direct*

Q. In labor cases? A. Not particularly labor cases, no sir.

Q. But you do do that kind of work in labor cases? A. We have shadowed people that are in labor unions but not just because of their labor union activity or association.

Q. For what reasons, for instance? A. Well, almost any reason that you want to know what they are doing, you want to know what they are doing and where they are doing it.

935

Q. What is the purpose of securing that information? A. Some client wants to know that.

Q. Do you know what the purpose of securing the information is? A. Not always, no sir.

Q. Have you in your capacity ever given instructions to men to secure information regarding the labor affiliations of certain individuals? A. To find out if he belonged to a union?

S. M. 232

Q. Yes. A. Yes.

936

Q. So that that information could be reported to the company that employs that man? A. Yes.

Q. Have you ever given instructions to the men employed by you to secure such information while you were representing the Consolidated Edison System? A. No sir.

Q. Were you ever employed by the Consolidated Edison Company? A. My company was, yes sir.

Q. Do you recall when? A. From 1933 until last October.

Q. That would be October, 1936? A. October, 1936, yes.

Q. Do you recall in what companies of the Consolidated Edison System the R. A. and I. worked? A. New

York Edison, Brooklyn Edison, Consolidated Gas, New York and Queens Electric Light and Power, Light and Power, yes.

Q. Did you have complete charge of the work that was being done in those companies? A. Well, I would say so, yes sir.

Q. What was the nature of the work that you were

S. M. 233

employed to do in those companies? A. Well, there were several things. The company had been receiving a lot of threatening letters, people going to blow up the power houses, or the switch houses.

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Q. Yes. A. They were going to harm officials, there were letters coming in that foremen were too strict in picking out certain people to pick on, you might say, and things of that nature.

Q. Yes. Have you left out any other? A. Then, there was a lot of meter jumping.

Q. Have you left anything out? A. I do not think so.

Q. Were you also asked to secure information regarding the labor membership of some of the employees of these companies? A. Of a particular individual?

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Q. Yes. A. No, sir.

Q. Or of any individuals? A. No sir.

Q. Do you have the records with you of the relationship that existed between yourself and the Consolidated Edison Company or the Consolidated Edison system during the period of time that you worked on the sys-

S. M. 234

tem? A. I have all that we have. These records also go back further than your subpoena calls for because

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*Foster Strader—For N.L.R.B.—Direct*

they are sheets out of our bookkeeping machines and that goes back as far as 11933?

Q. For what? A. What do you mean by that?

Q. Up to what time? A. Up to the discontinuance of the service, October, 1936.

Q. What do these records show? A. All these show is the amount of the monthly bill and the amount of cash received on it.

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Q. That is all your record shows? A. And the date the bills was rendered, the bill number, the operative number, the amount of the bill, the amount of the credit and the balance in the amount.

Q. May I see it? A. Yes. (Witness hands this document to counsel for the Board.) There is one other that does not even belong there but I brought it because it was discontinued in 1934, I brought it to show you so you will have the complete picture.

Q. Yes. Now, thank you. A. Yes, sir.

(Counsel examines the documents then handed to him.)

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Q. These records, how, which you showed me, do not indicate anything but the amount of money that you received for this work; is that right? A. I would say that

S. M. 235

is all; those things that are enumerated on here, but that is the sum of it.

Q. Is there anything on those records which indicate whether or not the R. A. and I. did any spying work on individual employees of the companies for the purpose of securing information regarding their labor affiliations? A. No, sir.

Q. Did you put on your records any place the kind of work that your operatives do for you? A. No, we do



not, in general, it is "Investigation", or "Shadowing", that would be probably about the only thing that we would put on there.

S. M. 236

Q. You never disclose whether they are investigating a labor matter or a social matter or an educational matter, or whatever the matter may be? A. That would be in the original order.

Q. From the company? A. Original order, I write up, when I get the order, to do certain work.

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Q. Do you have those orders? A. No, sir.

Q. Where are they? A. I have not had any for over a year or more.

Q. What happened to them? A. Why, we threw them out, we throw them out, you see, when a job is over, we just throw them out.

Q. When were the orders destroyed? A. On these?

Q. Yes. A. Probably away back in 1933, there was only the one order ever written on this company.

Q. Do you not have any orders written for the 1936 activity? A. No, the order is written for the job when the job is received.

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Q. What? A. The order is written when the job is received.

Q. What is the nature of the order which you write?

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A. It would give the code of the client, the address to send the report to, the amount to be billed every day, the expense allowance, if any, and the sort of operative wanted, the detail of the case, just what we were to endeavor to find out.

Q. What officer or official of the Consolidated Edison

System employed you? A. Well, now, that started before the period covered in your subpoena. Your subpoena covered from January 1, 1935 and ended to date, but we were working for them in 1933.

Q. Yes. Well, will you give us the name of the person, who first employed you? A. I think it was Mr. Frank Smith.

Q. Who was he? A. He was the president.

Q. Of the Consolidated Edison? A. Of the New York Edison Company.

947 Q. New York Edison Company? A. Right.

Q. Did you make your reports to him? A. I made some to him.

Q. To whom did you make them otherwise; if any? A. I think in Brooklyn we sent some to Mr. Parker.

Q. Mr. John H. Parker? A. John H. Parker.

S. M. 238

Q. Is that the Mr. Parker to whom Mr. Smith was referring in his testimony? A. I suppose so, only his testimony was all mixed up.

948 Q. Perhaps you will, then, please straighten some of it out for us? A. Yes.

Q. Mr. Smith testified that he had taken certain messages? A. He took an envelope but he did not know what was in it.

Q. An envelope to Mr. Parker? A. Yes, sir.

Q. Is that the same Mr. Parker? A. He has probably gone over there, I think, but I do not remember it.

Q. That would be the same Mr. Parker, however? A. Yes.

Q. All right. A. Yes.

Q. To what other men or man did you make such reports, or to whom did you submit reports of any character? A. I do not recall, offhand, I have made several,

myself, there, but those are the two that we received orders from. We have made reports to several men over there, but they were not men that gave us any orders.

Q. Did you submit reports to Mr. Carlisle? A. No, sir, never.

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Q. Did you always submit reports to the president of the respective company or companies? A. Yes, sir, I would say that I do not remember any one any less than that.

950

Q. No one in a lesser position than that? A. That is right.

Q. It would be the president of the company or some one higher? A. They could not be much higher.

Q. They could not be much higher? A. No.

Q. It would have to be the chairman of the board of directors, would it not? A. Well, it is rather technical there. I think Mr. Smith is chairman of the Brooklyn Edison at the same time we gave reports to Mr. Parker, but we never gave any to Mr. Carlisle, who is chairman of the new company.

951

Q. When did you cease submitting reports? A. Cease reports?

Q. Yes. A. In—written reports around July of last year.

Q. July, 1936? A. Yes, sir.

Q. July? A. '36, right.

S. M. 240

Q. After you stopped submitting written reports, you continued to make reports by word of mouth, did you?  
A. Short ones.

952

*Foster Strader—For N.L.R.B.—Direct*

Q. By telephone? A. Sometimes, and sometimes I would go down there and take it.

Q. Did you ever submit them in shorthand? A. No, sir.

Q. To whom did you make a report after you stopped making written reports? A. Mr. Parker came over to New York about that time and I quit giving him any reports. I gave them to Mr. Smith and then he was out of town and I just got out of the habit of dropping them in because we did not have very much work, any-  
how.

953

I do not remember any one else after that.

Q. Mr. Parker was the president of the company in which Mr. Solosy was employed? A. Oh, no.

Q. What company was Mr. Solosy employed? A. He was employed by the Consolidated Companies—by the Consolidated Gas Company, I mean.

Q. What was it, now? A. He was employed by the Consolidated Gas Company.

Q. Do you recall up until what date he was employed in that company? A. No, sir, I do not know. He was

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not there—I mean, I did not know he was not there until this morning, or, rather, yesterday, when I heard you say he was discharged.

Q. What was that? A. No, sir; I did not know he was not there until yesterday morning when I heard you say he was discharged.

Q. How did you know that he was employed by the Consolidated Edison? A. I looked it up.

Q. The Consolidated Gas Company? A. I had a little investigation to make on him.

Q. When did you have an investigation to make on him? A. April, 1935.



Q. At whose request was that investigation made?

A. Well, it was not exactly a request. I saw Mr. Smith one day, and he had a little circular there that some one had sent in to him and he asked me if I would get busy on it and find out what it was and who had been instrumental in having it published.

Q. What was the name of that publication? A. I think it was called the "Gas Plant."

Q. Was that concerning a labor organization? A. Well, it did not represent any official organization, no.

Q. Was it an organizational leaflet? A. No, if I re-

956

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member it, it had no organization name on it.

Q. What did it concern? A. Well, a lot of radical articles in there, and little kicks on this and that in different departments.

Q. What were the radical articles to which you refer? A. I could not tell you now.

Q. Were they labor references? A. They would be labor, but it was not organization in any way that I know of. It was not any union that you have mentioned here, I remember that part of it. I remember that much about it, I do.

957

Q. What did it pertain to; did it have to do with methods of organization; did it have to do with the desire of employees to be organized? A. No, it tried to get them to become organized, I think, but it did not represent any employees wanting to be organized outside of the men who were in it.

Q. Was Mr. Solosy one of the men that was in it?

A. Yes, sir.

Q. How do you know that? A. His name was on it.

Q. What was the name of the other man? A. Buck Ewing.

958

*Foster Strader—For N.L.R.B.—Direct*

Q. Is that spelled B-u-c-k and E-w-i-n-g? A. Yes.

S. M. 243

Q. Having these names, what instructions did you give to your operatives regarding these men?

Judge Ransom: I object to all this testimony in that it relates to a period before the taking effect of the Wagner Law so that even if the Wagner Law were applicable to these respondents this would not be within the scope of inquiry here; also, it is completely outside of this complaint.

959

Trial Examiner Gates: Objection overruled; proceed.

Judge Ransom: Exception.

A. Why, I started out to shadow them and see what they might be doing in the evenings.

Q. (By Mr. Moscovitz) What was the purpose of your shadowing? A. To see what they were doing.

Q. About labor organizational work? A. Anything covering them to see what they were doing.

960

Q. What did you want to know?

Trial Examiner Gates: Do not be so evasive about this matter, be frank about it, like the other witness was before you.

A. I am absolutely frank. I am not evasive. I gave my men instructions to shadow these two men to see where they were going and what they were doing. This man that was on the witness stand before you here lied to you, and you did not say to him anything when he told

S. M. 244

you a bunch of stuff that is not connected with this case

at all, and a lot of stuff that there is not a vestige of truth to it.

Q. (By Mr. Moscovitz) Mr. Smith testified that he was acting under your instructions issued to shadow Mr. Solosy? A. He shadowed him for two days, or was supposed to, and he could not even keep him covered, and I fired him for it. He only worked two days on that job.

Q. He did not do a good job? A. No, he did not. He lied.

Q. He complained that you worked him too many hours? A. He did not work. He lied. That is the reason I fired him.

962

Q. What? A. He did not work. He lied. That is the reason why I fired him.

Q. All right. In any event, there was some difficulty between yourself and Mr. Smith? A. No difficulty.

Q. About the covering of Mr. Solosy? A. Solosy—I just fired him because he was over here in New York and called on the telephone and reported to me that he was over there in Astoria.

Q. Did you put some one else on the job? A. No, we discontinued it.

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S. M. 245

Q. You discontinued it? A. Yes, sir.

Q. Did you discontinue shadowing Solosy? A. Yes.

Q. When did you discontinue it? A. After two days.

Q. What was the date? A. Well, I do not know exactly, but it was just two days, around the neighborhood. He did not do anything and just went home one day and one time he went up into the country over the week-end and we did not follow him up there, we just let it go.

Q. Did you have him shadowed? A. Who?

964

*Foster Strader—For N.L.R.B.—Direct*

Q. Smith. A. No, Solosy.

Q. Solosy went to the country? A. Yes.

Q. Did he come back from the country? A. I do not know. I never heard of him since then until yesterday when I heard his name here.

Q. Did you submit a report on Solosy to the company? A. Yes, sir.

Q. How many reports? A. Well, I had two men on that job and probably four reports.

965 S. M. 246

Q. How long did you have these two men on him? A. I had the two men on him for two days.

Q. Was that after Mr. Smith was taken off of the job? A. No, he was one of the men.

Q. What? A. He was one of the men.

Q. He was one of what men? A. The men that were shadowing him; yes, sir.

Q. And you had Mr. Smith and another man? A. Yes.

Q. Who was the other man? A. William Brown.

966 Q. You discontinued the service of both of these men? A. Yes.

Q. Did Mr. Brown lay down on the job, too? A. No, he did a very good job.

Q. Was it Mr. Brown's report which you sent down to the company in regard to Solosy? A. No. I sent Smith's report down there also.

Q. What were these two reports? A. Very little, if anything, that I remember, just the man went over—the man went to his home, and he went over in New York one evening, and I think the next evening I believe it was on a Friday, he was out of town, up in Connecticut, I believe.



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Q. Do you recall what part of Connecticut? A. No, it was some small town.

Q. What? A. It was some small town.

Q. Do you remember which operative gave you that information? A. Mr. Brown.

Q. How do you know he went to a small town in Connecticut, if you did not cover him up there? A. Some neighbor told him that that was where he had gone.

Q. That Brown learned that; that Mr. Solosy went to Connecticut? A. No, sir.

Q. Did Mr. Brown go up into Connecticut to verify that statement? A. No, sir.

Q. The neighbor simply told him that the neighbor told Mr. Brown? A. Yes.

Q. Was that after he left? A. Yes sir, that was after he left in a car.

Q. After he left in an automobile and then Brown found out the next day? A. No, that day.

Q. When was it that Solosy left? A. In the afternoon or evening.

968

S. M. 248

Q. In the afternoon or evening? A. Yes.

Q. Did you shadow him up in Connecticut also? A. No, we did not shadow him up into Connecticut also.

Q. How much longer after that time did you continue sending your men into that company? A. I did not send a man into the company. These men were not in the company. They were shadow-men out in the street.

Q. How long after that did you continue to shadow men of the company? A. That is the only time I recall of any actual shadowing of employees.

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970

*Foster Strader—For N.L.R.B.—Direct*

Q. How long after that did you have men— A. (interposing) We had and did investigations for them until October, 1936.

Q. Was the investigation now work that you did, work that had anything to do with labor organizations?

A. Only incidentally, in connection with the sabotage and the endeavor to blow up the Hudson Avenue plant which led us into the union headquarters there, and resulted finally in the conviction of two of the officials of it.

971

Q. There was or, I will put it this way, was there ever a time after Brown and Smith were taken off the job that you had any men in that plant or watching that plant?

Judge Ransom: Which plant?

S. M. 249

The Witness: Yes, I should like to know which plant you have reference to.

Q. (By Mr. Moscovitz) The plant. A. We never had any one over in the gas plant but for that one little job.

972

Q. But for the one little job, you never had any one over in the gas plant or in the gas plant? A. Right.

Q. Did you have any men working on gas matters?

A. Oh, for the Consolidated Gas Company probably, but not on the gas works, or in the gas works.

Q. What work did you do then for the gas company after Mr. Solosy left? A. Well, we looked up these two fellows that tried to wreck the Hudson Ave. plant, a couple of officials, a couple of union officials, but it is my recollection that was later.

We worked on that job, off and on, for nearly a year just on the question of finding out exactly who it was that did it and it resulted in two of these men going to jail for doing that job.

We investigated the matter of the sabotage up at Hell Gate, somebody, some one apparently shorted a transformer, not a transformer, but a bus-bar in the power house. We worked on the matter of an organized gang which was working up in the Bronx, and these people were actually going around and soliciting the sale of

S. M. 250

little articles to be put on meters, jumpers to be put on meters, in order to steal electricity, and their men were running up and down Eighth Avenue selling these things which were used for the purpose of stealing electricity.

974

Q. Have you done any work since October, 1936, for any of the Consolidated companies? A. No, sir, positively not.

Q. Did you shadow any other employees up to October, 1936, of the companies? A. We shadowed this fellow O'Shaugnessy, that is one of the union officials that tried to wreck the Hudson Avenue plant.

Q. Did you shadow Mr. Wernick? A. No.

Q. Mr. Kennedy? A. No.

Q. Mr. Emile? A. No.

Q. Mr. Wagner? A. No. I never heard of Mr. Emile or Mr. Wagner.

975

Q. Never heard of Mr. Wagner? A. No.

Q. Can you give us the names of some of the employees that you did shadow? A. Those are the only ones, these two boys at the gas company and the other

S. M. 251

two in connection with the blowing up attempt on the Hudson Avenue plant.

Q. Were there any leaflets that you inquired into of the company that went out over the name of Mr. Solosy; other than this one? A. Not of his.

Q. Did you inquire into any leaflets other than the one connected with Mr. Solosy? A. Yes, lots of them.

Q. Up until the period of time you quit work or, we will put it this way, up until what period of time did you inquire into those leaflets? A. Practically any time at all we were working on those leaflets. It was more or less of a continuous proposition.

Q. Did you inquire into any of them in the latter part of 1935? A. I would not swear to it offhand, but I think so.

Q. At any time in 1936? A. I would say so, but I could not know definitely.

Q. Did you have,—do you have any recollection of what kind of leaflets they were that you were inquiring into? A. A good many of them were the rankest communistic literature you ever read in your life, revolutionary stuff.

Q. You say, "revolutionary stuff"; will you refer to the substance of some of these leaflets? A. Well, peo-

S. M. 252

ple that want to— I do not know, revolutionize, anarchistic people, trying to destroy anything that is of any good in the country.

Q. What was there in any of these anarchistic or communistic leaflets or about these leaflets which caused you to inquire into them? A. Oh, terrible they were. I could not quote you now, I do not have any of them.

Q. Give us the substance of what they said. A. Stuff like the C.I.O. is doing out there in Michigan, occupying plants and taking the law into their hands.

Q. What did they say? Was that described in any way in these leaflets? A. No, but I mean that it was that nature of stuff.

Q. That nature? A. They tried to blow up the plant over here, you know.



Q. Was that in the leaflet? A. No.

Q. What was there in the leaflets? A. They supported the idea and they had the stuff in them to incite the people to do those things.

Q. What was the stuff that you refer to? A. Of that nature.

Q. Of what? A. Communistic literature.

S. M. 253

Q. I am looking for the language in them, that is what I want to know. A. I do not remember the language. It has been some time ago.

980

Q. It was in 1936? A. Yes, and I had dozens of them.

Q. Were they C.I.O. leaflets? A. No, there were no C.I.O. leaflets, not that I know of, at least I never heard of them.

Q. Just labor organization leaflets, is that it? A. No, not labor, Communism, well, just there was some, there was some brotherhood leaflet, but they were not such radical leaflets.

Q. When you say "Brotherhood," you mean the Brotherhood of Utility Workers? A. Yes.

981

Q. You do not mean the International Brotherhood of Electrical Workers? A. No.

Q. You mean the independent organization? A. That is the one.

Q. The substance of that leaflet was what? A. Well, unionism for that one.

Q. Unionism, instructions? A. No, this was the stuff of this fellow Stonka, that old I.W.W. worker over there.

S. M. 254

Q. Was Mr. Wernick's name on any of these? A. Wernick?

982

*Foster Strader—For N.L.R.B.—Direct*

Q. Was Mr. Wertzing on it? A. Yes.

Q. How do you know of Mr. Wertzing's activity in that regard? A. I had some of these leaflets.

Q. Did you inquire into Mr. Wertzing in connection with it? A. It was printed on them.

Q. You found Mr. Wertzing's name on leaflets when you inquired into them? A. We did not have anything to do with inquiring into the Brotherhood leaflets.

Q. What? A. Well, it is all printed right in the open who they are. You do not have to inquire into it.

983

Q. They were ascertainable right from the very face of the leaflet itself? A. Yes. They did not have these communistic leaflets that I am talking about there.

Q. How did you come across Mr. Wertzing's association with these leaflets? A. I saw the leaflet and I saw the articles in the Daily Worker, and that other radical newspaper, The New York Post.

S. M. 255

Q. Well, we will not go into that, but I would like for you to give us a line on the inquiry that you made into the leaflets that Mr. Wertzing was associated with.

984

A. I do not think we ever inquired into that. That is what I am trying to tell you.

S. M. 256

Q. What kind of inquiry would you make on any of these leaflets? A. Well, we had leaflets down there called "Edison Employees," and "Rank and File" and names of that sort, with communistic ideas on there, and addresses that were strictly communistic addresses on the base of these around Broadway and 14th, around that communistic building or buildings down there, and those sorts of leaflets I remember them generally. I do

not remember exactly going out and looking into any one sent out by the Brotherhood.

We might have originally to look up the Brotherhood office, just to verify that there was such a place, or something like that, but they have been deluged with leaflets for the last ten years, "Communist Cooperative," and "Communist Cooperative Association," and some other co-operative thing, and lots of them of that kind that you can pick up any day that they leave around Irving Place any time, just dozens of them.

Q. Were these leaflets turned over to you by the company? A. Some of them were. 986

Q. Were these leaflets turned over to you by the company? A. Some of them were.

Q. When they were turned over to you by the company, what were they turned over to you for and what were your instructions? A: Just, "Who is this outfit?",

S. M. 257

or "Who are they?"

Q. To find out about it? A. Yes.

Q. Did you send a report to anybody? A. Yes.

Q. To whom? A. To Mr. Smith.

Q. When you had them there in 1936, when you were last working for the company were you doing that same type of work? A. We did some of it in 1936; yes, sir. 987

Q. Let me show you some leaflets and ask you if you ever saw any of them? A. Yes.

Q. I will pass that for the moment. When you would make your report on the leaflet, or make the report of what your investigation covered, would you investigate every person whose name appeared on the leaflet? A. Most of them did not have names and that is why we investigated it.

*Foster Strader—For N.L.R.B.—Direct*

Q. And when his name appeared on it, did you investigate it? A. We—when do you mean?

Q. When you would make your report on the leaflet, or before making your report, would you investigate every person whose name appeared on the leaflet? A. As I said to you before, most of them did not have names. That is why we would investigate them.

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989

Q. When his name appeared on it, did that stop the investigation? A. The "Gas Plant" leaflet, after reading it very closely, we found these two men's names down in the bottom of it. It was just in a very little bit of a place, and we saw Bucks and Solosy's name and then we just checked up on that and investigated them a little bit.

Q. What about the others? A. The others do not have names on them.

Q. Would that leaflet be turned over to you by the company? A. Would what?

Q. Would that leaflet be turned over to you by the company? A. It would.

990

Q. And what were your instructions? A. To find out what is back of the thing and who is doing it. In that case the company did not realize that these two men got it out.

Q. Did you make an investigation of the leaflet that was signed by Mr. Solosy? A. Yes, sir.

Q. What was that investigation? A. Well, the first thing was to find out who was doing it, and I had to look on the leaflet to find out who the men were who were getting out the leaflet. When I looked on the leaflet I

S. M. 259

saw who it was,



Q. The company was not very resourceful in that instance; they did not really know how to find that out?

A. Well, they needed me because I was the investigator, and I found out by looking on it and immediately I knew it, but they did not realize who it was.

Q. You say he was shadowed, Mr. Solosy was shadowed? A. Yes, he was.

Q. You say he went home one night? A. He did.

Q. One evening he went over to New York? A. Yes.

Q. That is all you did? A. We shadowed for a couple of days those fellows to see what they did.

Q. What else did you do? A. That is all.

Q. What kind of a report did you make? A. I made a report that Mr. Solosy was not doing anything out of the ordinary. He came over to town once and he went to the country and Mr. Ewing was more active. He gave out some of the circulars to the gas men working down there.

Q. Mr. Solosy was active? A. He was not as active as Mr. Ewing was. He came over there once or twice to Mr. Ewing's house and went back home. I think he

S. M. 260

went over there just once.

Q. He was not so active? A. He was connected with him. His name was on the leaflet.

Q. And you pointed that out to the company? A. I pointed out the names on the leaflet, yes, sir.

Q. How about the leaflets that were gotten out by Mr. Wertzing? A. I did not know about them. I do not recall them.

Q. Mr. Grulich—do you recall the literature which was being distributed in 1935 and 1936 which was signed by Mr. Grulick? A. No.

Q. You do not? A. No.

994

*Foster Strader—For N.L.R.B.—Cross*

Q. How long did you continue to investigate those leaflets? A. Well, it was not a continuous job, it was whenever they showed up, some stranger, some one that we had not seen before and we picked them up.

Q. How much did you receive from the company for the work that you did over the period of time that you were employed by the company? A. The whole time from 1933 to 1936, \$55,000.

Q. \$55,000? A. \$55,000.

Mr. Moscovitz: That is all.

995

S. M. 261

Trial Examiner Gates: Cross examine.

*CROSS EXAMINATION:*

Q. (By Mr. Ransom) Are you—you spoke, Mr. Strader, about work that you did from time to time for the company in connection with meter jumping or stolen electricity? A. Yes.

Q. Did that in anyway involve directly or indirectly labor organizations or organization employees? A. Oh, no, no, no, that was racketeers.

996

Q. Was there a situation which existed during the period of your employment by reason of which various consumers of electricity and gas were induced by persons not connected with the companies to put on devices which produced under-estimates or under-metering of the amount of electricity which they used? A. Why, they even went so far as one fellow had a service to come in and take your meter and turn it back and seal it back again with counterfit seal.

Q. Did you work only with electricity or also with respect to devices for stealing gas? A. Not only gas, no, we did not do any work on the gas.

Q. You were only, from time to time, dealing with instances of stolen current? A. Yes, sir.

Q. That was a confidential work as detective-opera-

S. M. 262

tive wholly unrelated to any labor matter? A. Unrelated with it at all; no relation with it at all.

Q. Can you state for the record your impressions as to whether that practice of stealing electricity by these devices on the meters was extensive and a considerable source of loss to the companies? A. Very much so, yes, sir.

998

Q. Do you know whether or not, during the period as to which you testified there were various instances which were prosecuted in the court? A. Yes.

Q. For the stealing of gas or the stealing of electricity? A. Yes, sir, we got a whole gang.

Q. Did your work from time to time during this period constitute detective work to find out who were responsible for the circulation and the sale of these devices for stealing electricity, which was placed on the meters? A. That was our work to find that out.

Q. You spoke about detective work that you did in connection with sabotage and threatened injury to plants and property and the continuity of operations of certain of the companies who are respondents here? A. Yes.

999

Q. Were there instances in 1935 and 1936 in which the destruction of company property and destruction of

S. M. 263

company buildings and necessarily the destruction of the company's ability to continue service was endangered by the actions of persons? A. Yes. Mr. Smith called me down and showed me a bunch of letters and he said to me, "Strader, the most important thing this company

1000

*Foster Strader—For N.L.R.B.—Cross*

has to do is to produce and give a service", and he said, "This kind of stuff we cannot pass over." This was after this darn wild man had tried to wreck the plant.

Q. Was there an instance of actual destruction? A. Yes. Thomas O'Shannesy and a fellow by the name of Quinn who was there and when, after drinking around, and talking and threatening for months that—what they were going to do, and how they were going to upset the service, they got in and tried to do it.

1001

Q. Is the Hudson Avenue station a large generating station? A. It is the largest generating station in the country according to my understanding.

Q. Were these two men actually apprehended in the act of wrecking that station? A. They were recognized at the time. There was no case made against them for a little time but later they were convicted and served prison terms for it.

Q. Do you know whether or not, as a result of the investigation which you made as to the actual activities of these men and their relationship to the threatened

S. M. 264

1002

destruction of the Hudson Avenue Station, do you recall whether or not they were convicted after a trial or whether they pleaded guilty? A. I believe that when they went right up to the trial, they pleaded guilty.

Q. In any event they were given actual jail or prison sentences? A. Yes.

Q. For this sabotage of this large generating station? A. Yes.

Q. Was that the only instance in which your inquiries related to actual or threatened destruction of property that would have prevented the company from continuing service? A. No.

Q. What else? A. We worked on the Hell Gate prop-



ention, and that was one that was never cleared up yet, but we believe it will be. I have never found out how it happened, but it looked to me as though it was sabotage, but I would not say it was because we never proved it was. It was a shortage of a bus bar.

Q. Was there any instance in the Borough of Queens, the New York and Queens Electric Light and Power Company where your men investigated a threatened destruction of property? A. No, there was a letter re-

S. M. 265

1004

ceived that someone was going to throw a steel rope or a chain over one of the sub stations—one of the open sub-stations in Queens.

Q. (By Mr. Moscovitz) When was this? A. I could not say, and it had not occurred to me until he mentioned Queens specifically. It was over a year or more ago. They had one sub-station there. I cannot tell you right now just where, where the high tensioning wires were out in the open, and some of the radicals were threatening to short them at that point.

Q. (By Mr. Ramson) With respect to this pulling of switches and other damage at the Hudson Avenue station, did your men investigate the responsibility for that, for some continued period of time? A. Yes, quite a while.

1005

Q. Did you understand your employment and the reason for your employment related to that development of the threatened prevention of continuity of service? A. That was the only reason for it that I know of.

Q. You spoke of the fact that the men who were finally apprehended and who later, as you recall it, pleaded guilty of the offense, were president and secretary or some other officers of Local union of the so-called Brotherhood? A. One of them was an official of it anyhow.

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*Foster Strader—For N.L.B.B.—Cross*

Q. Was that investigation related to them because they were Brotherhood officers or members or because

S. M. 266

you were employed to find out who had endeavored to destroy a great generating station and stop electrical service in a large part of this city? A. The threats to the sabotage and the sabotage itself was the only reason of the investigation of those fellows.

1007

Q. Do you happen to know whether the amounts of money which were recovered by reason of these investigations and prosecutions on stealing of current exceeded the amount which you stated were paid by the company.

A. Not definitely, but I understand that there were several cases where they recovered very large amounts, over \$1,000 in some of them.

Q. Well, in any event you have not been employed, or your agency has not been employed by any of these respondent companies for any service since some time in October of last year? A. We have not, no, sir.

Judge Ransom: I think that is all.

1008

Mr. Moscovitz: Does your Honor desire to take a recess at this time?

Trial Examiner Gates: I suppose we may as well unless Mr. Ransom desires to continue.

The Witness: I would appreciate it if you could finish with me now.

Mr. Ransom: Then I would suggest that we finish with the witness now, if that is agreeable.

S. M. 267

Trial Examiner Gates: Perfectly.

Mr. Moscovitz: Certainly.

The Witness: I would appreciate it because I have a lot of work to do today.

**REDIRECT EXAMINATION:**

(By Mr. Moscovitz) Do you have any undercover men in attendance, or did you at the Brotherhood Convention in 1935? A. In 1935?

Q. Yes. A. I am pretty sure we did not. Where was that convention? Do you know?

Q. I do not know. A. I am almost sure.

Q. I have been informed it was at Providence, Rhode Island. A. No sir, we did not.

Q. Did you ever cover any of the Brotherhood of Utility Employees Conventions? A. Not the conventions, we did cover some of the meetings.

Q. Some of the meeting? A. Yes.

Q. To what period of time did those meeting coverages extend? A. Well, it was a time, the time we were working on this particular Brooklyn thing, I imagine it was almost for a year.

S. M. 268

1935? A. I would not want to say positively, I imagine it was that time, but I would like to look up the dates to be sure.

Q. And your best recollection would be 1935? A. Yes.

Q. Did it extend into 1936? A. No, not until then.

Q. It did not? A. No, we were not interested in the meetings after the fellow was convicted.

Q. To what fellow or fellows are you referring? A. Tom O'Shannessy who was vice president of the union over there.

Q. What other meetings of the Brotherhood did you cover outside of that? A. Some one in that connection. We were trying to get this fellow and there had been a whole lot of talk on this thing over there and that was what we were trying to do.

1012

*Foster Strader—For N.L.R.B.—Redirect*

Q. Was there strike talk at that time? A. I do not recall it.

Q. Were you called in to investigate the strike talk?  
A. No sir.

Q. Did you, during that period of time have any large number of men employed in the Consolidated Edison System? A. Large number?

S. M. 269

1013

Q. Yes. A. At one time, no.

Q. Did you have any number? A. Well, we have had as high as approximately three or four at a time.

Q. Did you have as many as 18 at a time? A. I would be almost sure we never did.

Q. Did you ever have as many as eighteen in the Brooklyn Edison? A. No, no.

Mr. Ransom: I object to the question unless the matter is related to the period not later than July 5.

Mr. Moscovitz: That is all. I have no further questions.

1014

Q. (By Mr. Cohn) In connection with the strike—

Mr. Ransom: I object to the question.

Mr. Cohn: Wait until I finish the question.

Mr. Ransom: I object to it. I object to any participation of any one who is not a party to these proceedings, as far as I know there are only two counsel in this case who are entitled to be heard and one counsel on behalf of the government, who is the Regional Labor Board attorney, representing the complainant, the Regional Labor Board herein, and the other is counsel for these respondents appearing specially.



*Foster Strader—For N.L.R.B.—Redirect*

1015

Mr. Cohn: I submit that we are parties of interest here. Our appearances have been entered here and we are attorneys for the complainants.

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who originally filed the charge and we would like to be heard.

Judge Ransom: May I suggest that orderly procedure requires that this proceeding proceed in the usual way.

Trial Examiner Gates: Normally examination will be conducted by one attorney, and I will sustain the objection.

1016

Mr. Cohn: Exception.

Mr. Moscovitz: That is all.

Judge Ransom: That is all.

(Witness excused.)

Judge Ransom: I move that we adjourn until 2:15.

Trial Examiner Gates: Is that all right, Mr. Moscovitz?

Mr. Moscovitz: Certainly.

1017

Trial Examiner Gates: We will adjourn until 2:15, (Whereupon an adjournment was taken until 2:15.)

1018

*Stephen L. Solosy—For N.L.R.B.—Direct*

S. M. 271

## AFTERNOON SESSION

Trial Examiner Gates: Proceed, gentlemen.

STEPHEN L. SOLOSY, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination:*

1019

Q. (By Mr. Moscovitz) What is your name? A. Stephen L. Solosy.

Q. Your address? A. 2213-24th Street, Astoria.

Q. By whom are you employed at the present time? A. I am not employed at present.

Q. How long have you been unemployed? A. Since January 17, 1936.

Q. By whom were you employed on January 17, 1936? A. Consolidated Gas Company of New York.

Q. That was your last date of employment with that company? A. That is correct.

Q. You have not worked since? A. No.

1020

Q. How long did you work for the Consolidated Edison Company? A. I never did work for the Consolidated Edison.

Q. Excuse me, Consolidated Gas, did you say? A. Yes.

Q. How long did you work for the Consolidated Gas?

S. M. 272

A. Well, the period I worked there is split up. I first started to work there, I think, in the beginning of October, 1928. That period ended in the end of November, 1928. Then I was rehired subsequently, January 3rd, I believe, 1929, and that employment period ended January 17, 1936.

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Q. What kind of work did you do when you were first employed by the company? A. I was employed in a testing capacity, in district testing stations.

Q. Is that in the laboratory? A. That was laboratory work.

Q. Were you always employed in the laboratory? A. No, the first period I was.

Q. Yes. A. Subsequently, on being re-hired, I was put in a plant laboratory of the Astoria Light, Heat & Power Company.

Q. Yes. A. Where I did laboratory work for, I should say, four months. After that I went into instrument work and have worked on instrument for from that time.

1022

Q. Were you working on instruments when you were last employed? A. Yes.

Q. What is work on instruments? A. Specifically, my title was Thomas Calorimeter Inspector.

S. M. 273

Q. What does that mean? A. That means maintaining, servicing, repairing, overhauling of that particular instrument.

1023

Q. What is that instrument? A. It is a recording calorimeter.

Q. What does it record? A. It records the BTU content of gas.

Q. What did you receive in pay at the time you were first employed? A. I started with \$20.

Q. How many hours a week? A. I think it was five and a half days. I think that came to 38 hours.

Q. And did you receive any increases during the period of time you were employed until January 17th?

A. I received increases all along regular intervals.

Q. Tell us about the intervals of increases. A. Well, after I was rehired, I was rehired at \$20, and then, on

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being transferred to instrument work, I received an increase of \$2.50, then, about six months later I received an increase of \$5. Then, I can't say, I think about two years later, I received another increase of \$2.50.

Q. Well, at the time— A. The period is not finished.

S. M. 274

Q. Excuse me. Go on. A. Then, subsequently, I should say in 1934—no—wait a minute—1935, I believe it was, I received a five dollar increase, which was final.

1025

Q. So that when you were last employed you received \$35 a week? A. Not quite. It came to \$33.54.

Q. \$33.54? A. Yes.

Q. Well, how do you quite figure that out? When you say you received \$20, then a \$2.50 increase, then a \$5 increase, then another \$2.50 increase, how do you quite figure that that way? A. The only way I can interpret that is that my services must have increased in value—

Judge Ransom: I move to strike out the answer as improper and not competent, highly self-laudatory.

1026

Trial Examiner Gates: It may be stricken.

Q. (By Mr. Moscovitz) I figure it at \$35. You have it down to \$33. A. That is because of the cut. You see, if there had been a reinstatement of the cut, I would have been rated at \$35.

Q. Was there a general cut? A. There was a general cut, I believe, in 1933.

Q. I see. And that was the reason. A. 10 per cent cut, was it? A. Yes.

S. M. 275

Q. Who was your immediate superior at the time



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1027

you worked on instruments or during the period of time you worked on instruments? A. A person by the name of Harold Miles Roderick.

Q. Was he your immediate superior at the time of your discharge or lay-off on January 17th? A. Yes.

Q. Who was your superior before Mr. Roderick in your other work? A. A person by the name of William Baylis.

Q. How many men were employed on instruments in your last work? A. Well, if we take into consideration all the companies, on that particular instrument, I believe it is seven.

1028

Q. Seven men throughout the entire system? A. Yes, that particular work.

Q. How many instruments were there of that nature in your particular company? A. Oh, my particular company, you mean the Consolidated Gas Company?

Q. Yes. A. Well, the Consolidated Gas Company embraced all of the companies, you see, in this particular phase of the work.

S. M. 276

Q. I see. A. All of the gas companies in the Consolidated system utilized 27 of these instruments.

1029

Q. And you say there are seven men who work on those instruments? A. There were. I don't know what it is at present.

Q. When you were last employed, there were seven? A. Yes.

Q. Did they all work in the same laboratory? A. No, we—when we started, we had one shop in which we did our repairing and overhauling. Then we had all the other men scattered over the system wherever the work was.

Q. What was the location of your work? A. Wherever I was assigned.

1030

*Stephen L. Solpsy—For N.L.R.B.—Direct*

Q. Where did you report? A. Our point of reporting was 15th Street, No. 4 Irving Place.

Q. Is that where all the men reported? A. Yes.

Q. Would you go from that point to your job? A. As a matter of fact, we didn't go there; we went wherever we intended to go directly in the morning.

Q. But did you get your instructions from 15th Street? A. We usually determined where to go.

Q. How would you determine that? A. By the nature of our work.

1031

Q. Would you determine it yourselves? A. Usually.

Q. Didn't the supervisor or the person to whom you were responsible give you any instructions as to the

S. M. 277

time and place? A. Our work was more or less independent. While we were coordinated to a certain extent, most of our work was decided for us. We had certain territories to cover and reported daily on what we did.

Q. Would you report at 15th Street? A. Yes.

1032

Q. Would that be at the end of the day? A. No, we would send in written reports by mail every night.

Q. Did you have any men working under you? A. Never.

Q. During the period of time that you were employed by the gas company, had you ever been reprimanded for inefficient work? A. Well, I suppose I have been reprimanded at times for various errors and such. That was usually in the beginning.

Q. In the beginning? A. Yes.

Q. When, if you recall, was the last time that you had been reprimanded for any inefficiency? A. I think

S. M. 278

in 1930 once I was reprimanded, once for some ineffi-

*Stephen L. Solosy—For N.L.R.B.—Direct*

1033

ciency, for not getting the required accuracy in the instrument.

Q. You corrected that condition? A. Yes, to the best of my ability at that time.

Q. After that, you receive certain increases in your pay. Is that right? A. Yes.

Q. Can you tell us whether or not during the period of time that you were employed and received these increases, you received, were those increases any recognition of meritorious work? A. Well, nothing material, nothing that I can show proof for.

1034

Q. Any statement to you by your supervisors? A. Yes, at various times—

Judge Ransom: I object to it as highly incompetent and improper. In fact, it might be more proper to have somebody else describe the witness than to have him describe himself. In any event, it was long before the taking effect of the Wagner Act, not within any issue here?

Trial Examiner Gates: Objection overruled. He may answer.

Judge Ransom: Exception.

A. Usually if I asked for an increase in pay, I was told that my work was satisfactory in every respect.

1035

S. M. 279

Q. (By Mr. Moscovitz) By whom were you told that?

A. By this Mr. Roderick.

Q. When was the first time that he made such statement to you? A. Well, I should say a few months after I was engaged in this work. I remember asking him for more money and I asked him whether my work was satisfactory and he said yes.

Q. Do you recall when, after that, he made such a

1036

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statement to you, if any? A. Well, about the only time that ever came up is when I asked for more money. That is all I can say.

Q. Each time you made a request for more money, did you receive more money? A. Well, the last time I requested it the answer was that nobody is getting any more.

Q. When was that? A. 1933, 1934, during that period.

Q. That was the last time you asked for more money?

1037 A. Yes, I asked quite a number of times during that time, but the answer was that no one would receive any more money until after the depression was over.

Q. Did you, after the depression, receive any more money? A. I received it during the depression.

Q. When was that? A. 1934.

S. M. 280

Q. You got another increase? A. Yes.

Q. Did you also get with that increase a statement from your supervisor that your work was satisfactory? A. Yes.

1038 Q. Who was that, Mr. Roderick? A. Yes.

Q. Did you receive any more? A. No.

Q. Between that time and the time you were laid off or discharged, were any statements made to you by your supervisor as to whether or not your work was satisfactory or unsatisfactory? A. Never.

Q. Were there any complaints registered against you for the work that you were doing? A. No.

Q. Did you receive notice that your employment relationship with the company was to be terminated on January 17th? A. Yes. Officially, I received notice of it about half an hour before I left.



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1039

Q. That was the first time? A. Yes.

Q. Who gave you this notice? A. My direct superior.

S. M. 281

Q. Mr. Roderick? A. Yes. I was called in and he told me that due to certain conditions, my employment was terminated.

Judge Ransom: Is that what he said? Did he say, "due to certain conditions?"

The Witness: I said due to certain conditions. If you want me to give the certain conditions, I could give them.

1040

Judge Ransom: I move to strike out the witness' statement. It is his own statement. He was asked to give what the conversation was.

Trial Examiner Gates: It may stand, but the witness may relate what the conversation was.

A. Well, my best recollection of it was that when I came in he said that "due to the shutting down of the 'A' Plant in the Astoria Light, Heat & Power Company, it would be necessary to put off some of the men, that I was the one to be let go in this particular division."

1041

Q. Any further statement by him? A. Well, I pressed him for more details, but he said, "You know more about it than I do."

Q. Did you ask him what he meant when he said, "You know more about it than I do"? A. No, I did not.

Q. Did he give you any other reason, or further reason? A. No.

S. M. 282

Q. After you pressed him for more details, and he made the statement to you, that you have already given,

1042

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was there any further conversation between the two of you? A. Well, he wanted to know what I would do in the future.

Q. What kind of work you were going to do? A. Yes, what I intended to do in the future, and where he could get in touch with me if necessary.

Q. Did you feel that you were laid off, or did he tell you that you were discharged? A. It is hard to say. That is one of the points I pressed him for. I told him, "Do you think some day I will be able to get back?"

1043

And he said no.

Q. Did you—did you press him further on it? A. Well, no, I did not press him much.

Q. Now, the "A" plant in Astoria, what is that? A. The Astoria Light, Heat & Power Company consists of one plant in Astoria. That plant is divided into four sections; each section being a plant in itself. They are designated by "A" and "B," "C," and "D" plants. The "A" and "B" plants were coal gas plants, and the "C" and "D" were water gas plants. The "B" plant had been shut down before I had ever come to work for the gas company and the "A" plant, which was a coal gas plant, had been operating all along.

1044

Now, for some reason they decided to shut down the

S. M. 283

plant.

Q. Did they shut it down? A. Yes, as far as I know.

Q. Is it still shut down? A. I couldn't say.

Q. When did you learn it was shut down? A. While I was working there.

Q. Had not been shut down while you were still employed? A. I couldn't say.

Q. Do you think it was shut down after you left? A. That is possible.

*Stephen L. Solosy—For N.L.R.B.—Direct*

1045

Q. Do you know? A. No, I don't know definitely.

Q. But in any event, that was the reason given for your lay-off or discharge? A. Yes.

Q. Has your superior or supervisor communicated with you since that day? A. No.

Q. Have you been requested to come back to work since that day? A. No.

S. M. 284

Q. Do you know whether or not a new man was taken on to do your work? A. Well, as far as that goes, about a year before I was put off—

1046

Judge Ransom: I move to strike that out. It is wholly unresponsive. I object to the witness arguing this case. He can answer the question.

Q. (By Mr. Moscovitz) Was a new man taken on to do your work? A. Subsequent to my being fired?

Q. Yes. A. No.

Q. Was there a man taken on at any time before you were discharged who took your place? A. Yes.

Q. When? A. About a year before I was fired.

Q. Was that his first year with the company? A. No, he had been doing chemical work in another part of the particular plant which I was in.

1047

Q. But had he ever done work on instruments before? Do you know what his length of service was with the company? A. I couldn't say for certain except that it was shorter than mine.

Q. Shorter than yours? A. By about a year.

S. M. 285

Q. By about a year? A. Yes.

Q. Did that man take your place? A. I think so, yes.

1048

*Stephen E. Solosy—For N.L.R.B.—Direct*

Q. Do you know whether or not at the time you were discharged there was plenty of work to be done on instruments? A. There was sufficient work—

Judge Ransom: Objected to as incompetent, calling for a conclusion.

Trial Examiner Gates: He may answer, stating the basis.

A. There was a sufficiency of work.

1049

Q. (By Mr. Moscovitz) Will you explain what you mean by a sufficiency of work? A. Well, there had been as much work as there had been previously and I know all along as long as I had been there we had always managed to keep going.

Q. Was there any indication to you or anyone that the work on instruments was going to be decreased? A. Quite the contrary. It was my belief that there was going to be an increase.

Q. From what sources did you arrive at that conclusion? A. Well, mostly rumor.

Q. Things that you had heard? A. Yes.

1050

Q. Can you tell me whether or not there has been an increase in your work since you were last employed by the company? A. It is my understanding, I can't give

S. M. 286

it as a fact, that there has been an increase, that some of the testing stations have been equipped with these particular instruments whereas before they had not been.

Q. In other words, there are some more testing stations? A. No, these are testing stations which had previously utilized only manually controlled calorimeter, whereas now they have these automatic calorimeters.

Q. Do you know how many men are now presently employed as testers on instruments? A. I couldn't say.



*Stephen L. Solosy—For N.L.R.B.—Direct*

1051

Q. You don't know. Were any other men who worked on instruments discharged or laid off at the time you were discharged or laid off? A. Not while I was there.

Q. As far as you know you were the only one? A. Yes.

Q. Do you know whether or not new men have been taken on since you were discharged or laid off doing the same work? A. I do not.

Q. I see. Do you know whether or not any of the persons who remained in the employ of the company who worked on instruments had more service with the company than you? A. I know that some of them had more service. I think four had more service and two had less.

1052

S. M. 287

Q. Now, are the two who had less service, persons who are still employed? A. Yes.

Q. Was the one man who came to work on instruments a year before your layoff or discharge one of the persons who makes up the two that you have just described? A. Yes.

Q. Who was the other man? A. Well, the other man is a man by the name of Roecker.

1053

Q. How long had he been working on instruments? A. He started in 1931. That would make it six years now.

Q. Had he been in the company before then? A. Shortly.

Q. Do you know whether or not there had been interruption in the continuity of employment of the remaining seven? A. No, not that I know of.

Q. When you first went to work for the company were you a member of any labor organization? A. No.

Q. Did you, after going to work for the company become a member of a labor organization? A. Yes.

1054

*Stephen L. Solosy—For N.L.R.B.—Direct*

Q. What labor organization? A. Well, first was the Federation of Architects, Chemists, Engineers and Technicians.

S. M. 288

Q. Is that affiliated with the American Federation of Labor? A. Not that I know of.

Q. An independent organization? A. Yes.

1055

Q. Did it exist in any companies outside of the Edison, the Consolidated Edison Companies? A. Yes, I know it was more or less of a craft organization. It had its main membership in the C.W.A. at that time.

Q. How long were you a member of that labor organization? A. Well, I suppose in a way I still am. I never resigned.

Q. Never resigned? A. No.

Q. Were you an officer of it? A. No, I was not.

Q. Did you belong to any particular local? A. I think there was only one organization at that time.

Q. Yes. And what was the date of your affiliation with this organization? A. I couldn't say exactly, some time in 1934, I believe, early 1934.

1056

Q. Did you, after becoming a member of this organization, become a member of any other labor organization? A. Yes. I subsequently became a member of the Brotherhood of Utility Employees.

Q. Do you recall when you became a member of that

S. M. 289

organization? A. I would say late in the spring of 1934.

Q. And were you a member, or did you become subsequently an officer? A. I was always a member, never an officer.

Q. Were you a member of any committees? A. Not that I know of.

Q. Were you a trustee or did you hold any official position? A. Well, as far as I know I held no official position.

Q. Was the Brotherhood an independent organization? A. Yes.

Q. Did it have members in companies outside of the Consolidated Edison System? A. I believe at that time there was a national set up and there were locals which had members in other companies.

Q. Do you know how long the organization had been in existence before you became affiliated with it? A. I am not certain. 1058

Q. Do you know whether or not it was affiliated with the American Federation of Labor? A. At the time I was in, it was not.

Q. It was a purely independent organization? A. Yes.

Q. Did you at that time belong to the employee Representation Plan as well? A. Yes.

S. M. 290

Q. When did you become a member of the plan? A. When everybody became. 1059

Q. When was that, was it before or after you became a member of the Brotherhood? A. I believe it was afterwards.

Q. Soon afterwards? A. Some time around that time. It is possible that there was an overlapping there.

Q. Around the same period of time? A. Yes.

Q. Were you ever an officer, or did you ever hold any executive position with the E.R.P.? A. No, I was a member of the committee once but that's all.

Q. What committee is that? A. An investigating committee.

1000

*Stephen L. Solosy—For N.L.R.B.—Direct*

Q. How long were you on that committee? A. About three months.

Q. When was it that you served on the Committee? A. Well, the committee was appointed in November, 1934, and was discharged some time in 1935.

Q. And did you serve for a particular purpose to investigate some particular problem? A. Yes, the—

Judge Ransom: Objected to as wholly immaterial to any issue here. There is no issue tendered here in the complaint as to the employees

1061

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representation plan. This is a matter outside of the complaint and outside the period of the Wagner Act, unrelated to any issue tendered.

Mr. Moscovitz: Well, I simply have to say generally in this line of objections, Mr. Examiner, that the Board should have before it all of the facts pertaining to this man's activities in any labor organization, because the allegation in the complaint is that this man was discharged because of his organizational activity. If it so happens that his activity goes back to a period preceding the passage of the Act, I submit that it makes no difference because it is the whole continuity of activity which must be taken into consideration by the Board and if we find this continuity, it must be shown.

1062

Judge Ransom: There is no complaint here. I submit that this employee, or any other, was discharged because of any activities under this Electoral system by which the employees chose their representatives for collective bargaining. The Employees Representation Plan was not a



*Stephen L. Solosy—For N.L.R.B.—Direct*

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company union as that term is understood. It was a method by which members of no labor organization voted and chose their representatives for collective bargaining. This man, along with many others, was evidently a member of other labor organizations, as he had a right to be.

Nevertheless, as an employee, he voted for whomever he saw fit as the representatives of the

S. M. 292

employees for collective bargaining. There is no issue made here whatever against that system of choosing representatives for collective bargaining, no issue claiming that this man or any other was ever discharged because he participated in any activity of that Electoral system.

1064

Trial Examiner Gates: You may answer the question.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) The question was what was the purpose for which this committee was set up by the Employee Representation Plan? A. The committee was set up to investigate the company union.

1065

Q. Investigate your own organization? A. To investigate the Employee Representation Plan.

Q. You mean the officers of the Employee Representation Plan set up a committee to investigate its own activity? A. It was done by our own department. We voted to have this committee investigate the Employee Representation Plan.

Judge Ransom: That was not a committee then of the Employee Representation Plan? Who created the committee, your department?

1066

*Stephen L. Solosy—For N.L.R.B.—Direct*

The Witness: This committee was elected in our department at a departmental meeting.

Q. (By Mr. Moscovitz) Was it elected by the mem-

S. M. 293

bership in the department? A. By a majority of the membership.

Q. Were you then to report to the membership in your department? A. We were.

1067

Q. Did you make such an investigation? A. Yes, we made a complete investigation and filed regular reports.

Judge Ransom: Move to strike out the witness' characterization of what he did, and I move to strike out his whole answer on the ground that it has no bearing on this case, outside any issue here, too remote, not within the period of the Act, or the complaint.

Trial Examiner Gates: Motion granted but the witness may state the extent of his investigation, if he wishes.

1068

A. Well, the investigation proceeded on the basis of first investigating the activities of the members of the general council primarily, then also investigating the set up of the plan, its origin, who drew it up, what caused its inception, and our reports were on that basis.

Q. When did you make your report, do you remember? A. I couldn't say.

Q. Was it at the end of— A. The first report was read at a meeting of January 4, 1935. That I know. But the others I couldn't state.

Q. Who was the chairman of the investigating committee? A. B. B. Ewing.

S. M. 294

Q. E-w-i-n-g? A. Yes.

*Stephen L. Solosy—For N.L.R.B.—Direct*

1069

Q. Who else was on the committee? A. I was the secretary of the committee and there was one more member and I believe his name was Lalone.

Q. Ewing was chairman, you were secretary and this other gentleman was a member? A. Yes.

Q. Did your investigation take three months? A. Yes, I think it did take that much.

Q. Was it then that you submitted your final report? A. We submitted reports all along. Our first report, as I said, was submitted January 4.

Q. What was that report? A. That was our preliminary report. 1070

Q. What was the report? A. Well, it was a four-page typewritten report. It dealt mostly—

Judge Ransom: I object to his stating the content of the report. It is certainly not the best evidence and besides, I submit, with very great earnestness, that it is not possibly within the issue here. In the first place, it relates to a period before the Act; and in the second place it relates to a period which is not within the charge or within the complaint. The charge upon which

1071

S. M. 295

this complaint is based is quite definite. The complaint is not as definite, but, nevertheless the complaint can have no greater virtue than the charge. There is nothing in the charge which opens to inquiry the period prior to July 5, 1935. This concededly was. There is nothing in the charge and nothing in the complaint which alleges that any man, this man or any other, was laid off or discharged because of his activities under or in relation to the Employee Representation Electoral system. I submit that certainly, under the

1072

*Stephen L. Solosy—For N.L.R.B.—Direct*

decisions of the courts, an administrative body like this Labor Board, acting quasi-judicially, must proceed upon some basis of paying heed to the limitations of time and subject matter of which it undertakes to give respondent companies notice of hearing, and I make the point specifically that this line of inquiry, like practically all of the inquiry that has so far characterized this hearing, is not within the complaint, not within the charge, and not within the period of the Act.

1073

Trial Examiner Gates: Objection overruled.

Mr. Ransom: Exception.

Q. (By Mr. Moscovitz). Were there any other committees set up during the period of time that your committee was in existence by the employees in your plant?

Judge Ransom: Do you mean his plant or his department?

Mr. Moscovitz: In your department?

S. M. 296

A. Not that I know of.

1074

Q. After your committee went out of existence was there any other committee set up in your department to inspect any of the phases of the Employee Representation Plan?

Judge Ransom: Objected to as incompetent, irrelevant and not within the period of time alleged in the complaint. It is without the issues of the charge or the complaint.

Trial Examiner Gates: Read the question.

(Question read.)

Trial Examiner Gates: If the question is directed to the witness' participation, it may be answered.



*Stephen L. Solosy—For N.L.R.B.—Direct*

1076

A. No.

Q. (By Mr. Moscovitz) The answer is no? A. That's right.

Q. During the period of time that you were engaged in this investigation, you were also a member of the Brotherhood, is that right? A. That is correct.

Q. Did you continue your membership in the Brotherhood? A. Yes.

Q. Until what time? A. Well, I believe until the time—wait until I think of the correct words—until it was reorganized.

1076

Q. When was that? A. I am not certain of the exact date.

S. M. 297

Q. About when in relation to your discharge? A. Some time in the spring of 1936.

Q. Now, until reorganization and while you were a member of the Brotherhood, did you engage in any Brotherhood activities? A. I did not get that.

Q. While you were a member of the Brotherhood? A. Yes.

Q. Did you take an active part in its business? A. Well, if organizing is to be considered as active business I would say yes.

1077

Q. Were you one of those engaged in organizing for the Independent Brotherhood? A. Yes, I was. I was not an official organizer, but I was doing organizing work.

Q. What was this organizing work which you were doing? A. Our organizing work consisted mostly in putting out publications and passing out these publications at the plant gates and at the various offices and in interviewing employees of the company.

Q. When did you first start that kind of activity? A. I believe in March, 1935, openly.

1078

*Stephen L. Solosy—For N.L.R.B.—Direct*

Q. March, 1935? A. Yes.

Q. And when you say "openly", what do you mean?

S. M. 298

A. I mean that before that we had not come out openly as members of any labor organization.

Q. Was it then in March of 1935 that you first let the world know that you were members of the Independent Brotherhood? A. Not exactly. That was the time we first let the company know we were doing active organizing work.

1079

Q. Did you disclose at that time that there was an Independent Brotherhood in existence? A. Yes.

Q. And when you say that you disclosed then for the first time that you were doing active organizational work, do you mean that you disclosed it by writing to the company or simply by your physical activity? A. Well, both, I should say, because I recall in one instance at that time I passed out papers at the Astoria works gate and the gate keeper came out and requested my name and I gave it to him.

1080

Q. Who else was engaged with you in this work? A. B. B. Ewing.

Q. Is that the same Mr. Ewing that was chairman of the investigating committee? A. It is.

Q. Did this activity that you were engaged in have the approval of the independent brotherhood? A. I believe so.

S. M. 299

Q. Did they know you were engaged in it? A. Yes.

Q. Were you doing it on their behalf? A. Yes.

Q. Was this work that you were doing during or after working hours? A. Always after working hours.

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1081

Q. And did you always distribute your leaflets openly at the plant gates? A. Yes.

Q. What gates? A. Practically every plant gate they had.

Q. Will you give us the location? A. The Astoria works which are situated near the river.

Q. Astoria, Long Island? A. Yes. There is the Ravenswood Works on Vernon and Webster Avenue, Long Island City.

Q. Yes. A. And Hunts Point gas works. That is in the Bronx, Hunts Point Road, Bronx.

1082

Q. Yes. A. And various other offices, the addresses of which I couldn't say off hand.

Q. Were you and Mr. Ewing alone engaged in this distribution of leaflet work? A. Not entirely.

S. M. 300

Q. Who did you have with you? A. I don't know them by name. They are merely casual acquaintances.

Q. Did you hear Mr. Strader testify this morning? A. Yes.

Q. Were you here all during the time he was on the stand testifying? A. Yes.

Q. You heard all of his testimony? A. I did.

1083

Q. Did you hear him testify that in the month of March, 1935, he inquired into certain leaflets that you had distributed? A. Yes.

Q. What was the name of the leaflet that you distributed? A. It was a paper, not a leaflet. It was entitled "The Gas Man".

Q. Did you hear him make a reference to the "Gas Man" this morning? A. I did.

Q. Is that the paper? A. It is.

Q. How often did you circulate these papers or distribute these papers? A. We attempted to publish it once every month.

1084

*Stephen L. Solosy—For N.L.R.B.—Direct*

S. M. 301

Q. When did you first start, in March? A. In March of 1935.

Q. How long did you continue the distribution of this paper? A. It continued until November of 1935.

Q. What time in November of 1935? A. Well, the issue was for November and that was the last issue.

Q. Well, was it issued, was it circulated the 15th of November, or the 1st of November or the 30th? A. Well, we had no formal circulation plan. We just went ahead and circulated it as best we could.

1085

Q. Was it being circulated during the whole month of November? A. Yes.

Q. Or the early part of when? A. Throughout November.

Q. Throughout November? A. Yes.

Q. Do you have any recollection as to when you stopped your circulation during that month? A. No.

Q. Can you tell us what the purpose of this publication was?

Judge Ransom: Objected to as immaterial, wholly incompetent, not within any issue here, and not a proper method of proving any fact germane.

- 1086

Trial Examiner Gates: Overruled.

S. M. 302

Judge Ransom: Exception.

A. The purpose of the paper was to gain membership for the Brotherhood of Utility Employees. The Brotherhood we were organizing for.

Q. Did you, during the period of time you were circulating this newspaper, secure membership in the Brotherhood? A. We did.



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1087

Q. You and Ewing? A. Yes.

Q. By personal solicitation? A. Yes.

Q. Did you secure few or many? A. Well, it depends on the meaning of the word.

Q. Tell us exactly then how many, if you recall? A. Roughly, twenty-five.

Q. Twenty-five? A. Yes.

Q. Was that through the combined efforts of both of you or was that the number you secured yourself? A. That was the combined efforts.

Q. Was it secured at the gates? A. No.

1088

Q. Did you follow up on your desire to secure membership by discussing the question with employees other places? A. Yes.

S. M. 303

Q. At their homes? A. In some cases, yes.

Q. Did you, and Ewing voluntarily stop the newspaper publication in November, 1935? A. I wouldn't call it voluntary. It was involuntary mostly. We just couldn't help ourselves. It was too much work.

Q. Too much work? A. Yes.

Q. Were you getting this up yourself? A. We were.

1089

Q. Did you, after the cessation of publications continue, however, your organizational activity? A. No, I would say not.

Q. You stopped? A. Yes.

Q. Do you recall when it was that the independent brotherhood reorganized? A. I don't know the date.

Q. Had they reorganized before November, 1935? Or after November, 1935? A. Oh, much afterwards.

Q. Was it after you were discharged? A. Yes.

Q. So that at the time of your discharge, you were still a member of the Independent Brotherhood? A.

1090

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S. M. 304

Yes.

Q. What was its full name? A. The Brotherhood of Utility Employees of America.

Q. Without the "Independent", is that it? A. Yes.

Q. Was there a particular local that you belonged to? A. I belonged to Equity Local first and later it was transferred to the Queens Local.

Q. Do you know how many locals there were? A. In New York, I believe there were three.

1091

Q. What was the one that you belonged to at the time of your discharge? A. The Queens Local.

Q. Was that local comprised of employees only of your company? A. No, there were employees of the Consolidated Gas System, but to be more specific they were employees of the New York and Queens Electric Light and Power Company.

Q. Between November, 1935 and January 1936, when you were discharged, were you engaged in any Brotherhood of Utility Workers activities? A. Yes.

Q. What was that activity? A. As I have explained before, it was mostly organizing work.

1092

Q. Did you secure new members after November, 1935? A. I couldn't say for certain. It is possible.

S. M. 305

Q. How much of your time did you spend in an effort to secure membership for the Utility Workers? A. Practically all my time except what I gave to the company.

Q. When you say all of your time except what you gave to the company, do you mean that you organized during or after working hours? A. After working hours.

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1093

Q. Do you recall—when you say all of your time, do you mean all of your evenings and all of your afternoons after you left work? A. Yes.

Q. Were you working then in conjunction with anybody else? A. B. B. Ewing.

Q. B. B. Ewing? A. Yes.

Q. Did you make reports to any of the officers of the Utility Workers Union during this period of time? A. You mean the Brotherhood?

Q. Yes. A. The newspaper work that we did was under the control of the publicity committee of the New York Local. That was called Equity Local, and naturally we had to have conferences with them before we could publish our paper.

1094

Q. Who was at the head of that department? A. Nielson.

S. M. 306

Q. Where was he employed? A. Probably New York Edison.

Q. Who else would you confer with? A. He was the one in charge of that committee.

Q. Did you ever come in contact with Mr. Grulich in this work? A. Oh, yes.

1095

Q. Was he also engaged in publicity? A. He was.

Q. Was he a member of the Equity Local? A. No, he was a member of the Queens Local.

Q. Did you discuss with him your program? A. No, not at that time we did not.

Q. Did you at any time before your discharge discuss with him your program? A. We never had any formal discussion.

Q. Were they informal discussions? A. Yes.

Q. Were they discussions that you had at regular

1096

*Stephen L. Solosy—For N.L.R.B.—Direct*

S. M. 307

meetings? A. No, they were purely informal.

Q. Would you go to consult with him, or would he come to see you? How would you get together? A. We would meet at various meetings.

Q. Yes. A. Or at the meetings of the executive committee.

Q. Yes. A. That was as far as it went.

1097

Q. Was there any one else outside of yourselves in your department who was actively engaged in this organizational work for the Brotherhood? A. No.

Q. You were the only one? A. Well, I didn't quite get that question.

Q. Was there any one else employed in your department? A. Yes.

Q. Actively engaged in this organizational work for the Brotherhood? A. Yes, Ewing.

Q. Ewing? A. Yes.

Q. Was Ewing discharged? A. Yes.

Q. When? A. The same time I was.

S. M. 308

1098

Q. Both of you were discharged at the same time?

A. Yes.

Q. January 17th? A. Yes.

Q. Was Ewing a tester of instruments? A. No, he was a testing station tester.

Q. Was he in the room when you were discharged? A. Yes, we got it simultaneously.

Q. Were you both there when each received the gate, so to speak? A. We were.

Q. Was there a reason given to Mr. Ewing for his discharge?

Judge Ransom: O object to the question and



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1099

move to strike out the testimony that has been given as to Mr. Ewing's being laid off. It is not within the complaint, not within the charge, not within the complaint as amended. No issue is tendered here under the notice of hearing of which these respondents have been apprised with respect to Mr. Ewing.

**Trial Examiner Gates:** You may answer.

**Judge Ransom:** Exception.

**A.** To tell the truth, I was listening to the reason given to me, so I couldn't listen about by some one else.

1100

**Q.** You spent your time concentrating on your problem; is that it? **A.** No, that is not the point. We each

**S. M. 309**

had a different supervisor. They were both present and each was getting his story.

**Q.** (By Mr. Moscovitz) Did you at any time after November, 1935, and before January 17, 1936, when you were discharged, become an officer of the Brotherhood? **A.** No.

**Q.** Have you been employed elsewhere at any time since your discharge? **A.** Well, if you can call New York State an employer, I would say yes. I had a week of jury duty.

1101

**Q.** Is that the only employment you have had? **A.** That is all.

**Q.** How much did you make that week? **A.** \$15.

**Q.** Is that the only income you have had since your discharge from work? **A.** Well, I have had odd work on my own, but the loss was always greater than my income,—

**Judge Ransom:** I move to strike out the answer and ask that the question be answered.

1102

*Stephen L. Solosy—For N.L.R.B.—Cross*

Trial Examiner Gates: Please read the question.

(Question read.)

Trial Examiner Gates: Answer that question.

A. I believe I answered it, because in any business venture an income is the remainder left after your expenditure is figured out.

S. M. 310

1103

Trial Examiner Gates: Perhaps you will explain a little more clearly.

A. Well, I went into a business. I tried my hand at chicken farming, and the way it turned out, we invested a certain amount of time and money, and when we got through we had less than what we started with, besides our time expended.

Q. (By Mr. Moscovitz) So the only money you made is that \$15 you were testifying about? A. Actually, yes.

Mr. Moscovitz: That's all.

1104

**CROSS EXAMINATION:**

Q. (By Mr. Ransom) Mr. Solosy, you entered the employ of the Consolidated Gas Company when? A. Early October, 1928.

Q. And in what capacity? A. As Junior tester.

Q. What was your payroll title at that time? A. Junior tester.

Q. That is, in 1928, when you went with the company, you started as a junior tester? A. That's right.

Q. That was your payroll title? A. Yes.

S. M. 311

Q. How long did you remain junior tester following 19— A. I have no way of telling.

Q. When were you first laid off by the company? A. In November, 1928.

Q. And you were later re-engaged? A. Yes.

Q. Now, when you went to the company how old were you? A. 18.

Q. And—you mean fully 18? A. No, probably a few months short of 18.

Q. During all your employment by the company, you were in what is known as the chemical department; were you not? A. Not the entire time.

Q. Well, during what—did you enter in the chemical department? A. I did. 1106

Q. Were you in the chemical department when you were laid off the last time? A. The last time, yes.

Q. During what part of your employment for the company were you in any department other than the chemical department? A. I was an employee of the Astoria Light, Heat and Power Company from January 3, 1929 to some time in May of 1929.

S. M. 312

Q. In what department? A. So far as I know there is no department. That one plant has no department. 1107

Q. What work were you engaged in doing? A. Chemical.

Q. What? A. Chemical.

Q. And so that during some time in 1928, or sometime in 1929 after you had been reemployed, your reemployment was by the Astoria Company, also in the

S. M. 313

chemical department? A. That is as close as you can come to it.

Q. What? A. I deny, though, that I was in the chemical department of the Astoria Light & Power Com-

1108

*Stephen L. Solosy—For N.L.R.B.—Cross*

pany because I am not certain that it has a chemical department.

Q. Your work was in the laboratory of the Astoria plant in Long Island City? A. Yes.

Q. And that is where the chemical tests and the calibration of instruments and the like is done at the Astoria plant? A. Yes.

Q. And your re-employment, after your first lay-off, was by the Astoria Light, Heat & Power Company at that plant? A. Yes.

1109

Q. And then later you were re-employed in the chemical department of what was then under the name of the Consolidated Gas Company of New York? A. I wouldn't say re-employed, transferred.

Q. Transferred from the Astoria Company? A. Yes.

Q. Now, as a matter of fact, Mr. Solosy, the Astoria Company is what might be called the manufacturing, the gas manufacturing department of the Consolidated Gas Company, wasn't it? A. Not accurately. There

S. M. 314

1110

was one of the manufacturers—it was one of the manufacturers that the Consolidated Gas Company had.

Q. Now, at the time that you went with the company, and for some years after that, the principal gas manufacturing plant of the Consolidated Company, and of the Consolidated Company system, was the Astoria plant? A. Again, that is a matter of opinion.

Q. I mean, referring to size. Let us take only that. A. Possibly it is correct. I don't know what the output of all the plant was, but Hunt's Point, plus the other plants of the Consolidated system would have possibly equalled that of the Astoria Light, Heat & Power Company.



Q. I ask you if you have any knowledge or recollection as to when the Hunt's Point plant to which you referred went into commercial operation. A. I have no way of telling.

Q. You have no idea? A. No.

Q. Was it in operation in 1928? A. Yes.

Q. The Hunt's Point plant? A. Yes.

Q. The Hunt's Point plant was engaged in commercial production in gas throughout, then, your period of employment with the company? A. It was.

S. M. 315

Q. You said that the Astoria plant was made up of four units? A. Yes.

Q. Two were coal gas and two were water gas? A. Yes.

Q. And do you know whether the Astoria plant, at the time you were employed, and for some time thereafter, was one of the largest gas manufacturing plants of the system, as well as of the world? A. Yes.

Q. And until the Hunt's Point plant was placed in operation, do you know, whatever date that was, which you say you do not know, but, until that time at least, wasn't the Astoria plant by far the largest gas plant in the city of New York and in the Consolidated system? A. I don't know, but I have no statistics on that subject.

Q. You haven't any impression on that? A. Impression, yes, but not absolutely knowledge.

Q. But, isn't it your impression that it was? A. Yes.

Q. The largest? A. Yes.

Q. By far. Now, are you able to inform the Examiner as to whether, during the period of your employ-

S. M. 316

ment,—I am not suggesting you had any relation with,—

1114

*Stephen L. Solosy—For N.L.R.B.—Cross*

but whether it is not true that during the period of your employment there has been quite a steady decrease, general decrease, in the quantity of gas sold to consumers in the Borough of Manhattan and other parts of the city, so far as the city is served by the Consolidated Gas group of companies? A. Again I have only hearsay evidence on that matter, that there was a decrease in the amount of sales in gas.

1115

Q. And is it your impression and understanding that that decrease in the volume of business continued through the period of your employment and was constant? A. I couldn't say it was constant. I simply don't know.

Q. Well, don't you know that it did keep going down practically year by year during the period? A. I had no access to any figures which would denote that.

Q. I am asking you whether that was not your understanding of the business in which you were engaged. A. I simply do not know.

Q. And had no impression about it? A. Impression is not knowledge. As I explained before, there was a diminution in sales. That is what I heard.

1116

Q. Well, let's look at it this way: When you went there, how many units of the Astoria plant were in operation? A. Three.

S. M. 317

Q. Which ones were they? A. "A," "C" and "D."

Q. At that time, then, there were two coal gas units and one water gas unit in operation? A. Yes.

Q. Before you went to the company, what had happened to the "B" coal gas unit in Astoria? A. I don't know.

Q. And it had been dismantled, had it not? A. Its use was discontinued.

Q. Its use was discontinued? A. When I was there it was not dismantled. It was placed in "stand-by" condition.

Q. It wasn't operated at the time you were there? A. No.

Q. What took place as to any of these units during the period of time you were there? A. They were operated.

Q. The "A" unit was operated up to about the time you left? A. I believe so, yes.

Q. And do you know, or isn't it your understanding that the decision was made that the "A" unit, the other coal gas unit at Astoria, was no longer needed, and would no longer be operated? A. Whether it was needed or not, I don't know, but I know there was a decision to shut it down.

S. M. 318

Q. Do you know that the company proceeded to close down and stop the operation of the Astoria unit? A. Yes.

Q. Now, when you came with the company, you went into the chemical department? A. Yes.

Q. And you were then, you say, just under 18 years of age? A. Yes.

Q. Were you a graduate chemist? A. No.

Q. Had you had any technical educational training whatever? A. At that time, no.

Q. What had been your education? A. I was a high school graduate.

Q. That meant three or four years high school. A. Four years.

Q. That was all? A. Elementary school, too.

Q. By the way, where were you born? A. New York.

Q. And you went with the company as a laboratory

1120

*Stephen L. Solosy—For N.L.R.B.—Cross*

assistant, at what rate of pay? A. I said I went with the company as a junior tester, at \$20.

Q. Well, you are quite sure about that; are you? A.

S. M. 319

About what?

Q. That your occupation and your payroll standing was that of junior tester when you went with the company? A. I know this, that on my personnel record which I saw, I was first rated as a junior tester.

1121

Q. I want to be entirely fair with you. Aren't you referring to the period after your first lay-off? A. No, I do not think so.

Q. Is it a fact that you went with the Consolidated Gas Company as a laboratory assistant for \$20. a week? A. What rate—

Q. \$20? A. You might call my work—what you might call my work, I do not know, but that was not my title.

Q. And what rate; was it your rate of pay? A. My rate of pay?

Q. Yes. A. My rate of pay was \$20.

1122

Q. \$20? A. Right.

Q. Is it true that you were— A. I beg your pardon.

Q. That after this lay-off you were later re-employed by the Astoria Company in its Works Laboratory again

S. M. 320

as a laboratory assistant? A. The nature of the work could really have gone as a laboratory assistant, but they certainly never called me that.

Q. You say your personnel record was what? A. I saw the one I had with the Consolidated Gas Company.

Q. Is it a fact that when you were transferred, as you



said, to the Consolidated Gas Company, in 1929, that you then became, for the first time, a junior tester, at the rate of \$22.50 per week? A. When I was transferred?

Q. Yes. A. What my rate was at the time of the transfer I do not know, but the nature of my work was not such as to entitle me to that particular rating.

Q. Which particular rating when—which particular rating were you not entitled to? A. I was not entitled to a junior tester. I was not doing that type of work.

Q. Did you do work as a junior tester for the Astoria Company? A. I do not know what my rating was in the Astoria Company.

1124

Q. You never knew what your payroll title was? A. The only title I had on the payroll was a number.

Q. Answer my question, if you can, please. A. Yes.

Q. You did not know what your payroll classification was? A. No.

S. M. 321

Q. No? A. No.

Q. As a matter of fact, the Astoria Laboratory was not a part of the chemical department of the Consolidated Gas Company, was it? A. No.

1125

Q. It was not? A. No.

Q. You came back to the Consolidated Edison Company after this lay-off and then a period of employment with the Astoria Company as a junior tester? A. I never worked for the Consolidated Edison Company.

Q. Well, the Consolidated Gas Company, one of the Consolidated Companies? A. Yes.

Q. You did? A. Yes.

Q. Your capacity was that of a junior tester? A. I believe at the time of transfer I must have been put back with that title.

Q. What was that. A. I believe at the time of the transfer I must have been put back with that title.

1126

*Stephen L. Solosy—For N.L.R.B.—Cross*

Q. Your rate of pay was \$22.50? A. What?

S. M. 322.

Q. Your rate of pay was \$22.50? A. Yes.

Q. It was? A. Yes.

Q. When were you put on this work of testing or inspecting the Thomas Calorimeter? A. Well, I can only give you an approximation of the time I did the work with the Thomas Recording Calorimeter.

1127

Q. Have you any idea? A. Yes.

Q. When, as to when? A. Yes.

Q. When? A. From 1929.

Q. 1929? A. Right.

Q. That is, testing on the Thomas Recording Calorimeter? A. The Thomas Recording Calorimeter, yes, sir.

Q. Just what is the Thomas Recording Calorimeter?

A. The Thomas Recording Calorimeter is a recording instrument designed to record—to determine and record the calorimetric content of gas.

Q. Are they instruments which are taken out on the "district," as they say in the gas business to the vari-

1128

S. M. 323

ous places for the purpose of testing the qualitative, caloric content of the gas, both quantitatively and qualitatively? A. They are not.

Q. Are they used anywhere except in the chemical laboratories? A. Until recently they were not used in the chemical laboratories.

Q. What do you mean by "recently"? A. There was one—the chemical laboratories do this work, whereas the Thomas Recording Calorimeter is definitely an industrial instrument. It was used at plant and holder sta-

tions, but comparatively recently was used in laboratory work.

Q. When did you say your inspections or tests with the Thomas Recording Calorimeter were made? A. That would range all over the city with the exception of the Bronx, except in one case.

Q. What case? A. I did that work at the Central Union Gas Works, 138th St., in the Bronx. Outside of that, I did work in Manhattan, at various stations, and also in the Queens.

Q. Did you do any in Brooklyn? A. Brooklyn?

1130

Q. Yes. A. No.

S. M. 324

Q. Richmond, the Borough of Richmond? A. No.

Q. No? A. No.

Q. Only a small part of Queens, is that the idea? A. I should say a part, but I would not say a small part.

Q. You would not say a small part of the Borough of Queens? A. No.

Q. Where—were you only in one of the several wards? A. In three of the wards.

Q. What was that? A. There were three different locations.

1131

Q. In Long Island City? A. Astoria, Long Island.

Q. Ravenswood? A. Yes.

Q. You were? A. Yes.

Q. That would be in Long Island City? A. Yes.

Q. It would? A. Yes.

Q. Anywhere else? A. Yes, Bellrose.

Q. Bellrose? A. Yes.

S. M. 325

Q. Were your instructions that you should make in-

1132

*Stephen L. Solosy—For N.L.R.B.—Cross*

spections with the Thomas Recording Calorimeter while you were in the field? A. My work was never field work. We always worked indoors.

Q. Your work was wholly indoors? A. Yes.

Q. What was your title after you started in with the Thomas Recording Calorimeter? A. After I started?

Q. Yes. A. I do not know of any particular time that my title was changed. My title at the time I saw it, at a particular time, I have forgotten when, was the grade on which my rating was, which was Thomas Recording Calorimeter inspector.

1133

Q. Is it a fact that you were first, after your transfer to the chemical department, following your first lay-off and then reinstatement, that you were first a junior tester? A. On my first reinstatement, I believe so.

Q. You were? A. Yes.

Q. You were a junior inspector of the Thomas Recording Calorimeter? A. Yes, I then followed that form of inspection with the Thomas Recording Calorimeter at the time—

S. M. 326

1134

Q. What was that? A. Maybe I didn't understand your question.

Q. My question was, simply this: Then, you were a junior inspector of the Thomas Recording Calorimeter? A. I should have been, yes, from the inspection until the time following what you call my lay-off.

Q. Were you ever raised or promoted to any position beyond that of junior inspector of Thomas Recording Calorimeter? A. There was never any formal notice ever given to me of any change in my status as far as title is concerned.

Q. As far as you know, up until the time that you were laid off in January of 1936 you were still a junior



*Stephen L. Solosy—For N.L.R.B.—Cross*

1135

inspector of the Thomas Recording Calorimeter? A. I believe I was an inspector of the Thomas Recording Calorimeter, yes, sir.

Q. Do you know— A. Well, as I said before, on the one occasion, I cannot recall right now just when it was, I saw a card on which my rating was inspector of Thomas Recording Calorimeter.

Q. But you would not be surprised to find that you never reached a higher standing or employment rating than that of a junior inspector? A. I would not, ever, be surprised to see what rating I would have been listed under.

1136

Q. You spoke about your increases and decreases in pay? A. Yes.

S: M. 327

Q. In 1930 you said your weekly pay reached what amount? A. In 1930 I believe my pay was \$27.50.

Q. Was that raise in 1930, or was it adjusted to \$30.00? A. That may have been at the end of 1930 or the beginning of 1931. I suppose you mean was that raise, in 1930, adjusted to the figure of \$30.00?

Q. That is right. A. As I said, that may have been in 1930 at the end of the beginning of 1931.

1137

Q. You spoke of a reduction of pay which was made approximately  $8\frac{1}{3}$  per cent in amount. Was any connection with a reduction in hours in order to spread the work in connection with the NRA? A. That I cannot answer.

Q. Was there a reduction in hours, and was it an  $8\frac{1}{3}$  per cent reduction? A. There was, yes.

Q. That was as of what time? The Fall of 1933 or the summer of 1933? A. I could not say for certain.

Q. In other words, the company, in your department, cut the working hours to 35 hours per week on the "Spread-the-work" idea? A. Yes.

1138

*Stephen L. Solosy—For N.L.R.B.—Cross*

S. M. 328

Q. In connection with that, there was an 8 1/3 per cent reduction in pay? A. Yes.

Q. Has 35 hours still as far as you know, and was it during the time of your employment set as the hours of work in that department? A. Yes, it was.

Q. As far as you know, it still is? A. I do not know.

Q. That had the effect of cutting your pay, as junior inspector, to \$27.50? A. Yes.

Q. For 35 hours per week? A. Yes.

1139

Q. Do you recall whether or not in the month of April of 1934 as part of the general adjustment that half of the 8 1/3 reduction in pay was restored to all employees below officers and heads of departments? A. Well, I do not know the date—I did not hear the date as you stated it.

Q. I said, do you know that as of April, 1934? A. Yes.

Q. Was 4 1/6 per cent; that is, half of the original reduction on the "spread-the-work" program was restored without an increase of hours? A. Yes, without

1140

S. M. 329

an increase of hours.

Q. Do you know whether or not later the other 4 1/6 per cent that had been taken off was restored? A. I never received it.

Q. That took place after you had been laid off? A. That is possible.

Q. In any event, there had been an adjustment in your pay as junior inspector in 1934 by which you received not \$28.75, but \$33.54 per week? A. Yes.

Q. You said several times that from the period since you were laid off on January 17, 1936, that aside from

the income that you did not receive as expected profits from a chicken farm, you had no income? A. I did not. I said I got \$15.00 for jury duty.

Q. Leaving out the juries and leaving out the chickens, that is it, is it? A. Yes.

Q. Are you quite sure about that? A. Yes.

Q. I ask you whether or not it is not true that after you were laid off in January of 1936, on January 17th or January 18th you did not receive from the Consolidated Edison Company a separation allowance on the basis of one week of pay for each year of service? A.

1142

S. M. 330

I received that from the Consolidated Gas Company.

Q. That was paid to you after you had been laid off on January 17, 1936? A. I would not say that because I received it before the termination of my employment.

Q. Let us be perfectly accurate about it. Was it not true that, or first, let us get at this way: When was it now that you say your termination took place? A. My employment terminated on January 17th and I received the money on January 17th.

Q. You are as sure about that as you are about the other matters you have testified to here? A. Am I as certain about having received that money on January 17th?

1143

Q. Yes. A. Yes, I am certain of it.

Q. And on that basis that you received as a separation allowance one week for each year of service, which amounted to pay at your full rate of pay to and including the week of March 7th, 1936? A. You mean it would have come that way?

Q. Yes. A. Yes, that is one way of putting it.

Q. Well, it covered that period? A. How could it

1144

*Stephen L. Solosy—For N.L.R.B.—Cross*

S. M. 331

cover that period? It was a sum of money allowed to me when I was discharged.

Q. Or laid off? A. Discharged.

Q. Upon your separation from work you received as a separation allowance \$234.78, if you do not recall the exact amount, I would not hold it— A. Something like that.

Q. You do not challenge the amount? A. No, so, roughly, it is in that neighborhood.

1145

Q. You are sure that you received that on the day that you were separated from work? A. Yes.

Q. How was it paid to you? A. Well, I received credit slips from my immediate superior and I went down to the cashier and presented those credit slips in due form and they were paid out to me.

Q. Who gave you the credit slips? A. I am not quite certain on that point. I know that the secretary had to handle them because they had to be signed by the department head and assistant department head, or one or the other.

1146

Q. Of the company or of your department? A. Of that department.

Q. Have you any idea who gave you these credit slips? A. I cannot be certain on the slips, but I know

S. M. 332

that I had to get them from my immediate superior.

Q. And who was he? A. H. M. Roderick.

Q. Then, before he gave you the credit slips, they had to be approved by somebody else? A. As I remember now, the secretary made them out but they were not to be approved until I turned in my case of tools and identification card.



*Stephen L. Solosy—For N.L.R.B.—Cross*

1147

Q. You proceeded to do that that day? A. Yes.

Q. Then this was the same that you had been told that you were laid off? A. Yes.

Q. Do you recall whose approval aside from that of your immediate superior you had to get? A. Of what?

Q. Of the credit slips? A. I do not recall who signed them, that may have been either the department head or the assistant department head.

Q. But, in any event on this day when you were laid off you got your seven weeks' pay; namely, a separation allowance of one week for each year that you had been in service? A. Yes.

1148

Q. By the way, are you married? A. I am not.

S. M. 333

Q. You spoke about this committee that existed in the chemical department. A. Yes.

Q. That all took place in 1935, did it not? A. The committee work, no.

Q. Yes? A. No, it started in 1934 and went into 1935.

Q. Well, it was wound up early in 1935? A. Yes.

Q. It did not continue after that; the committee was discharged, you say? A. Yes, the committee was discharged.

1149

Q. That was purely a committee in the department? A. Yes.

Q. In the chemical department of the Consolidated—that called, the Consolidated Gas Company? A. Yes.

Q. It was? A. Yes.

Q. You spoke about the reorganization of the Brotherhood of which you are a member at the time of your discharge as taking place after your discharge. What did you mean by "reorganization"; a change in

1150

*Stephen L. Solosy—For N.L.R.B.—Cross*

name? A. Partly. At that time it was talk that was going on of affiliating with the American Federation of Labor.

S. M. 334

Q. What did take place as the reorganization of the Brotherhood? A. You mean what actually took place?

Q. Yes. A. I was not present when it took place.

Q. Do you know? A. No, not definitely.

1151

Q. Have you any idea? A. My ideas may not be the same as the facts.

Q. You do not know what the present name of the Brotherhood organization is? A. Yes it is the Utility Workers Union.

Q. What? A. The present name of the organization which is in the field covering the Consolidated Gas System is the "Utility Workers Union," an affiliate of the C.I.O.

Q. That change of name and affiliation is what you meant as the organization—reorganization of the Brotherhood of Utility Employees? A. No. I did not say that. I mentioned in my previous—

1152

Q. (interposing) You spoke about the reorganization of the Brotherhood? A. Yes.

Q. What reorganization took place? A. At that time there was talk—

S. M. 335

Q. (interposing) I am not talking of the talk. I am talking of what did take place. You called it a "reorganization." Was it really a reorganization? What was the reorganization? A. That reorganization was the affiliation of that brotherhood with the American Federation of Labor.

*Stephen L. Solosy—For N.L.R.B.—Cross*

1153

Q. Did they affiliate? A. Yes.

Q. The Brotherhood of Utility Employees? A. Yes.

Q. Did you by virtue of that, become a member of the American Federation of Labor? A. No.

Q. Why not? A. Because I was not in town at the time.

Q. Were you not a member of the organization which was reorganized and affiliated with the American Federation of Labor? A. Yes.

Q. Yes? A. Yes.

Q. Did that make you, thereby, a member of the American Federation of Labor? A. Well, I did not take out a membership card.

1154

Q. Did your, what you might call, or what you do call the Queens Local of the Brotherhood, become a

S. M. 336

part of the American Federation of Labor? A. I could not say for certain.

Q. What? A. I could not say for certain.

Mr. Moscovitz: Mr. Examiner, in all of this testimony which comes after the discharge, I will have a witness as to the period of the discharge or the lay-off of this witness, a witness regarding the reorganization. I had intended and do intend to go into that upon another witness' testimony. I think that it will be helpful to point out at this time that this witness had his relationship with the company terminated in January, 1936, you see, he did not continue in the company's employ thereafter, probably we could get at those facts better through another witness.

1155

Judge Ransom: Well, it is certainly within the scope of the cross-examination as to what he

1156

*Stephen, L. Solosy—For N.L.R.B.—Cross*

called the reorganization of which he spoke on his direct testimony.

Mr. Moscovitz: I am not objecting to that. I am merely calling your attention to the way I intend to offer this proof.

Judge Ransom: I did not anticipate that you would object to testimony of this character, because it is obviously admissible.

Trial Examiner Gates: Proceed.

1157

Q. (By Mr. Ransom) Do you know whether this Queens Local of which you at one time had a part was

S. M. 337

at any time affiliated with the American Federation of Labor?

Mr. Moscovitz: I object to that question, Mr. Examiner. I do not know that this witness stated that he had at any time become a member of the Queens Local. It is my recollection that he testified that he did not. I think that should be developed.

1158

Judge Ransom: I withdraw the question for the moment.

Q. (By Judge Ransom) When did you resign from the Queens Local of the Brotherhood? A. I never resigned.

Q. Are you still a member? A. Of a non-existent organization?

Q. Of a reorganized organization, as you put it? A. When the organization no longer exists you cannot have membership in it.

Q. But if it reorganizes under any other name or form? A. After the metamorphosis?



*Stephen L. Solosy—For N.L.R.B.—Cross*

1159

Q. You may want to quibble with me but I am not quibbling with you? A. No.

Q. Did you, after your discharge, continue as a member of any labor organization? A. No.

Q. You are sure about that? A. With this qualifi-

S. M. 338

cation that after awhile, about two weeks after being laid off or discharged, as I say, I continued going to meetings of the Queens Local.

Q. What was that other labor organization that you mentioned you belonged to? A. Federation of Architects, Chemists, Engineers, and Technicians.

1160

Q. As far as they are concerned, you are still a member? A. Yes, in a way, I suppose I am, although not in good standing.

Q. You have not kept up your dues, you mean? A. No, not for two years.

Q. You have not gone to any meetings? A. No.

Q. No? A. No.

Q. You were a member of that during 1934, 1935, and part of 1936? A. Permit me to explain that I was, I signed up with them, with that particular organization as a member and went to a couple of meetings and saw it was not the organization I wished to belong to, consequently I joined the Brotherhood.

1161

S. M. 339

Q. Can you fix the time when you joined the Brotherhood? A. It was in the spring of 1934, that is the best I can do.

Q. That was before this setting up of this system upon which there was an arrangement whereby the employees voted by secret ballot to elect their representa-

1162

*Stephen L. Solosy—For N.L.R.B.—Cross*

tives? A. Whether it was before that or not, I do not know because they were both about the same time.

Q. You participated in the process of nomination and election in your department in the company under the system I have reference to? A. Yes.

Q. You never resigned from this Federation of Architects, Chemists, Engineers, and Technicians or whatever it was? A. No.

Q. Did you ever resign from the Brotherhood? A. No.

1163

Q. How do you fix two weeks after you were laid off as the termination of your membership? A. I do not fix it, I merely state to you that time as from that time on I was no longer in town.

Q. As a matter of fact are you not still a member and do you not consider yourself still a member of the present organization? A. I do not hold a membership card.

Q. Do you consider yourself a member? A. Well, I

S. M. 340

cannot see how. I cannot because I am not in that particular industry.

1164

Q. Have you here any copies of this paper that you spoke about, the "Gas Man," or I believe the title of it was the "Gas Worker"? A. I have not.

Q. I believe the witness this morning referred to it as the "Gas Plant," but I understand from your testimony that it is the "Gas Worker"? A. I do not have a copy of it here. That is the right title.

Q. That was published quite openly and above board, and above your signature? A. Except the first issue.

Q. The first issue was when? A. In March.

Q. Of 1935? A. Yes.

Q. March, 1935? A. Yes.

*Stephen L. Solosy—For N.L.R.B.—Cross*

1165.

Q. The first issue published over your signature was in April or the latter part of March? A. Either April or May, sometimes because sometimes in there we skipped an issue.

Q. You wound that project up and stopped that publication early in November, 1935? A. We did not wind

S. M. 341

it up. It was stopped by our discharge. That is the reason why it stopped.

Q. Were you discharged in November, 1935? A. We brought that paper out as often as we could get it out, but we were delayed and we could not, but we intended to bring it out whenever we could. We were at work on the formulation of that paper when we were discharged.

1166

Q. Were you going to get out another issue? A. Yes.

Q. That is your testimony now? A. Yes.

Q. You did not mean to say to Mr. Moscovitz that the publication of that paper was ended in November?

A. I never said it was intended to be ended. I said, it ended.

Q. I see. But, in any event after March of 1935, your activities in behalf of the Brotherhood as well as your activities in behalf of the employees representation plan or system of using that method— A. I beg your pardon sir, I did not hear you.

1167

Q. In any event after March of 1935, your activities in behalf of this Brotherhood as well as your activities in behalf of the Employees Representation System of choosing collective bargaining representatives you said

S. M. 342

was openly made known to the company? A. Yes.

1168

*Stephen L. Solosy—For N.L.R.B.—Cross*

Q. You did at that time and after that continue activities both in the Brotherhood and under the Employee Representation Plan? A. Yes.

Q. About how many members were there to your knowledge of this Queens Local of the Brotherhood during your period of activity in it? A. I do not know. I never had access to the records.

Q. Have you any idea how many? A. Well, at some of the meetings there must have been easily 200.

Q. 200? A. Right, 200.

1169

Q. And you say that was the largest number you ever saw, or wouldn't you make that statement? A. Yes, at any one time.

Q. At other meetings, like most organizations, the attendance was less? A. Yes.

Q. The largest you ever saw at any meeting was 200? A. That is my best estimation. I did not count them at that time, of course.

Q. Yes, it is just an estimation. I am not holding

S. M. 343

you to any mathematical count. I understand that. A.

1170

That is right.

Q. Did you ever attend any other meetings of the Equity Local in Manhattan? A. Yes.

Q. Have you any idea of how many members there were in that Local or Brotherhood? A. Any idea?

Q. Yes. A. I would say in its hey day there was about 1200.

Q. How many did you ever see at a meeting? A. 300 as an estimate.

Q. Without holding you to the exact number, you would say about 800 was the largest you had ever seen?

A. How many?

Q. 800. A. I said 300.



*Stephen L. Solosy—For N.L.R.B.—Cross*

1171

Q. 300? A. Yes.

Q. You say you saw about 300 and you would say that 300 was the most you ever saw at a meeting? A. Yes.

Q. Is it a fact, Mr. Solosy, that in this chemical department personnel that many men who were your junior in service as well as some who were your seniors in ser-

S. M. 344

vice were laid off or transferred or retired in connection with and by reason of this reduction in the volume of work? A. As far as I know, when I was laid off, there was no one who was or had seniority over me who was fired.

1172

Q. But those who were or, at least, among those who were junior to you, they had either been laid off or had been transferred? A. I do not understand your question.

Q. Were there not many of those who were junior to you that had either been laid off or had been transferred prior thereto or at the same time? A. Many?

Q. Yes. A. As far as I know, with the exception of people who were given temporary employment, there were none put off before me.

1173

Q. Well, let us see some of them. Among the men who were in the three-year class, did you know a Mr. Dinkfeld? A. Yes, sir.

Q. Was he laid off? A. With me?

Q. Yes. A. At the same time.

Q. Did you know a Mr. Mannheim? A. Yes.

S. M. 345

Q. Was he laid off? A. Yes, at the same time I was.

Q. Was Mr. Roecker laid off at the same time you were? A. Yes.

1174

*Stephen L. Solosy—For N.L.R.B.—Cross*

Q. Did you know Mr. Ingram and Mr. Nordmeyer resigned? A. He resigned to take a better position, Mr. Nordmeyer did, while I was there, but Mr. Ingram was working there while I was there.

Q. You do not know whether he resigned? A. No.

Q. Speaking of Mr. Lalone, did he resign? A. Yes, to get a better job elsewhere.

Q. So far let us take the employees who were on the three year transportation and we have found there were three resignations and three lay-offs? A. Yes.

1175

Q. There being only two more employees in that category of the three year men. Now, did you know Mr. MacLennan? A. Yes.

Q. Mr. J. M. MacLennan? A. I beg your pardon, no. I could not say so.

Q. Did you know Mr. J. M. Terry? A. Yes.

Q. Were both J. N. MacLennan and J. N. Terry who were your juniors in service transferred out of the de-

S. M. 346

partment for this same reason that led to your being laid off? A. I could not answer that.

1176

Q. Were they transferred out the department? A. I recall when Terry was transferred, the other I cannot say.

Q. You recall Terry was transferred? A. I did not say for the purpose that you stated.

Q. Well, he was transferred out of the department at about that time? A. Yes.

Q. Did you know Mr. D. L. Johnson? A. Yes.

Q. He was transferred out of the department, wasn't he? A. I believe into the sales department.

Q. Yes. A. Yes.

Q. Taking those of your own class, the six year men, you knew Mr. Henry Bishko? A. Yes.

*Stephen L. Solosy—For N.L.R.B.—Cross*

1177

Q. He was transferred out of the department, was he not? A. Yes, but you said he was in my category, he was not.

Q. Was he a man with six years of service? A. Oh, the time category, but he was not in the same line as I was.

Q. Not in the same functional line, but he was one of

S. M. 347

the six year men? A. Yes.

Q. Mr. J. J. Sheahan was another man in that office in the six year category? A. J. J. Sheahan?

1178

Q. Yes. A. As far as I understand he went to the sanitarium with tuberculosis.

Q. He was separated from the payroll, was it? A. That is one way of putting it.

Q. Well, I am not discussing at the moment what was undoubtedly true, if he were ill, he had the sick benefits, but in any event he disappeared from the department work and off of the payrolls? A. Yes.

Q. That is your understanding is it? A. Yes.

Q. You spoke about Mr. Roecker? A. Yes.

Q. You spoke of Mr. Roecker having had an equal period of service with you? A. I said less.

1179

Q. What? A. Less.

Q. That is the amount of Mr. Roecker's service with

S. M. 348

the Consolidated Gas Company, is it? A. With any affiliate of the Consolidated Gas Company.

Q. Your statement is that you are sure that Mr. Roecker did not have a longer period of service with some other company of the system? A. I know he definitely had no service with any Consolidated Gas affiliate that would entitle him to longer service than I.

1180

*Stephen L. Solosy—For N.L.R.B.—Cross*

Q. Mr. Ewing was also, first, he was, let us say, your junior in service, was he not? A. Yes.

Q. How many men, all told, would you say that there was in this chemical department of the Consolidated Gas Company who had, at the time of your layoff, who had six years' service or less? A. How many were laid off?

Q. No, how many were there; what was the total number of the employees in January of 1936 who had been there six years or less? A. That I could not say.

Q. You have no idea? A. No.

1181

Q. Who—how many were there in the whole department? A. Roughly, fifty.

Q. Fifty? A. Fifty.

S. M. 349

Q. Would you say that a quarter of them were men who had been there since you had? A. I could not say.

Q. You have no idea? A. No.

Q. You could not even give this Examiner and the Board any idea? A. If I started in and made a tabulation I probably could.

Q. Well, let us do that? A. All right.

1182

Q. There were not more than ten or twelve who had been there a lesser period of time than you? A. Yes. I cannot state that positively.

Q. You cannot give any impression on that? A. It would not be a very good one.

Judge Ransom: That is all.

Mr. Moscovitz: I would like to have a short recess.

Trial Examiner Gates: A five minute recess.

(Whereupon a 5 minute recess was taken.)



*Stephen L. Solosy—For N.L.R.B.—Redirect—Recross*

1183

AFTER RECESS

Trial Examiner Gates: The hearing will come to order. Proceed.

Mr. Moscovitz: Do you have any other questions you want to ask the witness, Judge Ransom?

Judge Ransom: No.

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REDIRECT EXAMINATION:

Q. (By Mr. Moscovitz) Mr. Solosy, were any of the men to whom Judge Ransom referred and about whom Judge Ransom questioned you, men who fell into certain year classifications engaged in the same kind of work that you were engaged in? A. No. The men that he asked me about were not engaged in the same type of work I was.

1184

Q. Tell me who the president of the company was in which you were last employed? A. Frank W. Smith.

Mr. Moscovitz: That is all.

RECROSS EXAMINATION:

Q. (By Mr. Ransom) Mr. Solosy, up until the time that you were laid off, had not six employees in the chemical department already been transferred or laid off? A. Six?

1185

Q. Yes. A. I could not say.

Q. No? A. I do not think it was that many.

Q. At the time you were let out, did that not represent the transfer or letting out of six more? A. If you include me, yes.

Q. This was not a solitary letting off of you? A. No.

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Q. There were five others at that time? A. Yes.

1186

*Stephen L. Solosy—For N.L.R.B.—Recross*

Q. Four of them immediately and two of them since the shutting down of the plant had been completed, which was estimated for March 1st, is that true? A. Yes.

Judge Ransom: That is all.

Q. (By Mr. Moscovitz) Mr. Solosy, how many men were there engaged in your kind of work? A. Seven.

Q. Seven. A. Yes.

1187

Q. Were there any men laid off who fell into the classification to which Judge Ransom referred and about which Judge Ransom has questioned you, who fell into the class of work done by you and the other seven men? A. Six?

Q. Yes, six? A. You mean in my line?

Q. Yes. A. No, there were none in my line.

Q. So then, it is so that out of all of those who had been discharged or transferred or went into institutions, or went to a sanitarium, they were none of them men who were engaged in work the nature of which you

S. M. 352

were doing with this instrument; is that right? A. Yes, sir.

1188

Q. Therefore, this other list of men who had been discharged, transferred or sent into sanitariums or institutions, were in no case men who were engaged in or connected with the type of work on the Thomas recording calorimeter? Is that correct? A. That is true.

Mr. Moscovitz: That is all.

Q. (By Judge Ransom) Is it true that, Mr. Solosy, that after these layoffs and transfers that you spoke about or admitted, which I referred to as of the six year class and other classifications, there were first six before yourself and then six at the time that you were let out;

that the men who are left in the department were men who had either very much longer service than you or very much better chemical or technical training? A. I would not say that, no.

Q. Well, isn't it a fact that most of the men who were left in the department after these layoffs had much longer periods of service? A. Not all.

Q. Most of them anyway? A. Not nearly all of them, no.

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1190

Q. Not nearly all of them? A. No.

Q. Well, let us say the majority, by far? A. Well, I will admit that.

Q. By far? A. The majority.

Q. Is it true that the men who had less service than you and those who are left in the department after the carrying out of the program for reduction in force in connection with the shutting down of the coal gas plant in Astoria were men referring now to the men that were near in service to you, and that were left were men who had technical and chemical training and education considerably in excess of yours? A. I am not competent to pass on that.

1191

Judge Ransom: That is all.

Q. (By Mr. Moscovitz) They still were not men that were doing your kind of work? A. No, they were not.

Q. Do you know whether or not there was followed by the company in the layoffs or discharges which took place the seniority provisions for layoffs or discharges?

A. That I do not know.

Mr. Moscovitz: That is all.

Q. (By Trial Examiner Gates) Did you state that

1192

*Stephen L. Solosy—For N.L.R.B.—Recross*

the number of employees in the chemical department was about 50? A. Yes.

S. M. 354

Q. Including all of the employees who were laid off prior to your layoff and at the time of your layoff? A. Yes, probably, not including the administrative staff.

Q. You were paid on a weekly basis? A. Yes, sir.

1193

Q. Then you would include in the administrative staff who? A. Well, the department heads and the assistant department heads and the various men in charge of division like my own division for instance.

Q. In that division there were seven people including yourself? A. Yes.

Q. Were there any others with greater seniority than yourself? A. Four had more and two had less.

Q. In connection with this report on the employees Representation Plan you said the first report, the preliminary report, was January, 1934. Did you make any special report or official report of subsequent report? A. Yes, we made three, I believe, we made a final report, a subsequent report, official in nature, and three in all.

1194

Q. Can you state the date? A. No, I cannot.

Q. Can you state the approximate period that would cover? A. Well, I had one come up about February and

S. M. 355

a few more came out later.

Q. Was that in 1934? A. 1935. There were three altogether. One came out in February and two more came out later.

Q. That was during the spring of 1935? A. Yes.

Q. Can you state over how many months the period covered? A. For the whole investigation?



*Stephen L. Solosy—For N.L.R.B.—Recross*

1195

Q. Yes. A. Four or five months.

Q. (By Mr. Ransom) You say this was in the year 1935? A. Yes, sir.

Q. And during the spring of 1935? A. Correct.

Q. (By Trial Examiner Gates) It started in 1934? A. Yes, sir.

Q. It ended when? A. March, by March I should say.

Q. By March? A. Yes.

Q. You have heard testimony by Mr. Smith this morning what he testified to? A. Yes.

Q. Can you identify any of those instances? A. Very easily. I know the instances he mentioned as having 1196

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taken place several times. I called frequently on my colleague in this work, Mr. Ewing. That took place down on Irving Place.

Q. That is where Mr. Ewing lives? On Irving Place? A. Yes.

Q. You of course were not aware that you were being tailed? A. No.

Q. This paper that you put in "the Gas Man," were there any identifying marks on there on the first issue which was such as it would disclose your name or Mr. Ewing's name? A. Not on the first issue, no. That came out incognito. 1197

Q. Was there any way in which Mr. Strader, the witness who testified could tell who published it? A. Not on that particular issue. The later issues had other names on it, our names on the editorial page.

Q. The later issues had your names on the editorial page? A. Yes, sir.

Q. (By Judge Ransom) You say Mr. Solosy, you started this publication, "The Gas Man," in March, 1935? A. Yes.

1198

*Stephen L. Solosy—For N.L.R.B.—Recross*

Q. Is that the name of it? A. I believe it is.

Q. That was early in that month? A. I believe it came out early in the month, yes.

Q. This chemical department of which you were a

S. M. 357

member and which made—I refer to the chemical department committee of which you were a member, and which made the several reports, were there any reports by that committee after you started publication of the "Gas Man"? A. I do not believe so.

1199

Q. Those reports had been made and the committee of the department discharged before the paper was started? A. Yes.

Q. Was the first issue of the paper entirely anonymous? A. Well, after due thought I do not think you can call it entirely anonymous because if I recall the matter we put in the body of the matter—there was a place, and you must remember that I am recalling this after two years ~~now~~, I believe that Mr. Ewing put his name and address in there some where as some one who could be contacted but there was no statement that he was definitely connected with it, if I remember correctly.

1200

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Q. Nothing to identify Mr. Ewing as a member of any labor organization? A. He said there, I believe, and this is just my recollection, you know, I believe he stated if any one wanted to get in touch with the union, that they could reach the union through him, and that he would put through their application or anything of that sort.

Q. That was in the first issue? A. Yes.

Q. But with respect to the editorial sponsorship, that came later? A. Yes.

*Stephen L. Solosy—For N.L.R.B.—Redirect*

1201

Q. As far as the sponsorship of the first issue was concerned, it was anonymous? A. Yes, I should say practically so.

Q. Well? A. I make this reservation because the name "Equity Local" was on the front of the page.

Q. That was on it somewhere? A. Yes, and obviously the inspiration must have come through there.

Q. There was nothing to identify it in reference to its publication? A. Except as I have stated before, Mr. Ewing's name.

Q. There was a printed statement in it if any one 1202

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wanted to get in touch with anybody in connection with the union they could do so by getting in touch with Mr. Ewing at his home address, was it? A. I believe his home address.

Q. His home address was on Irving Place? A. Yes.

Q. It was? A. Yes.

Q. He used the address in this paper to give the information that he could be reached there? A. Yes.

**REDIRECT EXAMINATION:**

1203

Q. (By Mr. Moscovitz) Was it in the next issue that your name appeared? A. Yes.

Q. That was in April? A. I do not know what date—whether we put out that in April or May, because I know that we skipped one of the month's issue at that time, so it may have been either April or May.

Q. April or May? A. Yes.

Mr. Moscovitz: That is all.

Judge Ransom: That is all.

Q. (By Trial Examiner Gates) Did you abandon

1204

*Stephen L. Solosy—For N.L.R.B.—Recross*

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"The Gas Man" prior to your discharge? A. Well, we had never abandoned it. We had never given up the thought of publishing it. We intended to put it out as soon as we could get the material together and the money to have it printed.

*RECROSS EXAMINATION:*

1205

Q. (By Mr. Ransom) So you testified here this morning that you gave up the publishing of "The Gas Man" early in November because it was too much work, did you not? A. I said that was one of the causes. You misunderstood me, I believe. I said it ended as a fact, but it was never voluntarily ended by us, and if our employment had continued the paper would have come out further.

1206

Q. You did not say this morning that you gave it up because it was too much work or that it ended because its publication was too much work? A. As I remember, and I realize the fallibility of human memory, as I remember it, I said it ended and the reason that it came to an end because we had not the time to put into it, it was too much work, but that does not preclude the idea that later on we might continue it.

Q. Did you not intend this morning to give the Examiner the idea that you gave up the publication or intended to give up the project early in November be-

S. M. 361

cause its publication was too much work? A. Yes, and I still intend to convey that impression.

Q. There is no doubt in your mind, is there? A. No, sir, and I think I can best qualified to pass on that.

Judge Ransom: That is all.

*Stephen L. Solosy—For N.L.R.B.—Recross*

1207

Mr. Moscovitz: That is all.

Trial Examiner Gates: You are excused.

(Witness excused.)

(Discussion off the record.)

Trial Examiner Gates: We will recess until Monday at ten o'clock a. m. in the morning. If there are any subpoenas out for attendance today, please return at that time.

(Whereupon, at 4:45 o'clock p. m., June 11, 1937, the hearing adjourned to Monday, June 14, 1937, at 10 o'clock A. M.)

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1210 S. M. 362

## Minutes of Hearing, Held June 14, 1937

BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
SECOND REGION

IN THE MATTER  
of

1211 CONSOLIDATED EDISON COMPANY OF NEW  
YORK, Inc., and its affiliated companies,  
BROOKLYN EDISON COMPANY, Inc.,  
NEW YORK & QUEENS ELECTRIC LIGHT  
& POWER COMPANY,  
WESTCHESTER LIGHTING COMPANY,  
THE YONKERS ELECTRIC LIGHT AND  
POWER COMPANY,  
NEW YORK STEAM CORPORATION,  
CONSOLIDATED TELEGRAPH & ELE-  
CTRICAL SUBWAY COMPANY,  
*Respondents,*

Case No.  
II-C 224

1212 and  
UNITED ELECTRICAL AND RADIO WORKERS  
OF AMERICA, Affiliated with the COMMIT-  
TEE FOR INDUSTRIAL ORGANIZATION.

14 Vesey Street,  
New York City, N. Y.,

June 14, 1937.

The above-entitled matter came on for hearing pur-  
suant to adjournment taken June 11th, 1937, at 10:00  
o'clock A. M.

Before:

ROBERT M. GATES, Trial Examiner.

Appearances:

DAVID A. MOSCOVITZ, Esq., Attorney for the National

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Labor Relations Board.

WILL MASLOW, Esq., Attorney for the National Labor Relations Board.

1214

LOUIS B. BOUBIN and SIDNEY ELLIOTT COHN, 8 West 40th Street, New York, N. Y., appearing for United Electrical and Radio Workers Local 1212.

MESSRS. WHITMAN, RANSOM, COULSON & GOETZ, 40 Wall Street, New York City (By William L. Ransom, Jacob H. Goetz, and Pincus M. Berkson, of counsel) appearing specially for the respondent companies, reserving all objections to jurisdiction.

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1215

Trial Examiner Gates: Proceed.

Mr. Moscovitz: Mr. Examiner, you will recall that last week there was some question raised by yourself regarding some questions in the complaint?

Trial Examiner Gates: Yes.

Mr. Moscovitz: And it was left for Judge Ransom and myself to discuss the matter after which we stated that we would take it up with you again.

First, I would like to bring to your attention that there should be a semi-colon after the word "solicitors" on the bottom of page 7. It is page 7, subdivision 3 of

*Proceedings*

1216

paragraph 22. You will find the word "solicitors". There should be a semi-colon after that word instead of a comma. I understand there is no objection.

Judge Ransom: No objection.

In some of the copies it was that way and others did not have it, so I did not make a point of it at all.

1217

Mr. Moscovitz: The question was raised by you, Mr. Examiner, on the 8-2 allegation. I erroneously stated that there was no 8-2 allegation that was before you. That statement was the result of certain revisions made of certain complaints before issuance, and confusion in my own mind at that point. A statement that I made concerning the absence of the 8-2 allegation, I wish to correct this morning. The complaint does contain an 8-2 allegation, as well as the regular 8-1 allegation. However, the

S. M. 365

paragraphs 23 and 24 have certain numerical references which should be changed and the changes would be in paragraph 23, the second line, from paragraph 18 to 21; from 17 to 22;

1218

24 which will be changed from paragraph 18 to 21; to 17 to 22.

Judge Ransom: For the respondents I may say that until Saturday noon I did not consider that or know that it was intended that allegations were a cause of complaint under Section 1, subdivision 2 of the Act, that is that they were intended to be in this case. I do not of course make any suggestion that there was anything except a misunderstanding on the part of what had been said between counsel in that respect. Certainly the complaint as it stood was ambiguous in that respect and I understood that it was not intended that the case should go to hearing with a question under section 8, subdivision 2.

This application this morning for an amendment of which I had information on Saturday by bringing the allegations of paragraph 22 into the scope of the averments of paragraphs 23 and 24, which previously had contained no reference to paragraph 22, certainly have the effect, if they are granted, of bringing an 8-2 cause of action definitely into this case. Under the circumstances, although I realize the entire good faith of all that has taken place, I do not think that in behalf of the respon-

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1220

dents we should consent to the amendment. We reserve our previous objections, not only to the jurisdiction, but also to this broadening of the complaint under which we are proceeding.

Trial Examiner Gates: Do you care to put in the record, Judge Ransom, a copy of the complaint as served upon the respondents?

Judge Ransom: I do not raise that question. I think that the record sufficiently shows, and Mr. Moscovitz will not contest—in fact the record does not show the copy of the complaint which he put into the record, the first day shows, that paragraphs 23 and 24 of the complaint did not refer or bring within the scope of those paragraphs, the matter set out in number 22.

1221

Mr. Moscovitz: The complaint makes an 8-2 allegation, and that complaint is in the record, and it is the same complaint which Judge Ransom has and which was served on everyone. The only thing is that the complaint did not make a reference to section 8-2 in the two paragraphs we have been talking about and which I have this morning moved to amend, so that the record will be complete therein.

Judge Ransom: Paragraphs 23 and 24 which are the essence of the cause of action here did not contain any

1222

*Proceedings*

reference up to this moment to paragraph 22 and consequently it did not appear that the complaint intended to

S. M. 367

bring in Section 8, subdivision 2 allegation in the paragraphs 23 and 24.

• Trial Examiner Gates: We will go off the record.  
(Discussion off the record.)

Trial Examiner Gates: Paragraph 22 has an allegation of section 8, subdivision 2?

1223

Judge Ransom: That is correct.

Trial Examiner Gates: 24 has. 23 is the only one which has not.

Judge Ransom: But 23 and 24 which were the essence and gist of the cause of action we were trying, does not contain a reference to paragraph 22 as a part of those causes of complaint, and I think I should say to your Honor frankly now that from the viewpoint of the respondents, although we contest the jurisdiction of the Board broadly, we shall, if this motion is granted, submit respectfully two further objections to the proceedings.

1224

In the first place, if this proceeding is broadened so as to involve direct attack upon the labor organization which these respondents have recognized as the collective bargaining agency or such of their members as belong to that labor organization; and if the complaint is by this amendment broadened so as to involve a direct charge of outlawry against that labor organization, under the terms of subdivision 2 of Section 8 of the Act, we shall make the point, and ask Your Honor to rule, that there

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is a defect of *parties* in this proceeding. We do not believe that this Labor Board would be proceeding according to law in entertaining a section 8 (2) cause of action against the International Brotherhood of Electrical



workers in hearings to which that labor organization is not a party and of which that labor organization has not had due notice or an opportunity to be heard.

To my mind it seems elementary that the labor organization which is attacked under Section 8 subdivision 2, is a necessary and indispensable party to valid proceedings. I shall also make the point that if the complaint is allowed to be amended so as to bring within its scope in paragraphs 23 and 24 a section 8 subdivision 2 cause of action, or that the complaint is not sufficiently definite and certain and is not in adequate form to make its charge definite so as to give the respondents and other necessary parties due information of the charge brought by the administrative board of the government.

1226

I mention those things now because I think Your Honor should have them in mind in passing upon the allowance of this amendment. If this is a section 8-2 proceeding, it is invalid from its inception for defect of parties, I submit.

**Trial Examiner Gates:** Until the exhibits are here, I believe that point cannot be definitely answered. I am

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1227

under the impression that a copy of the complaint and notice of hearing, or at least the amended notice of hearing, served on the I.B.E.W. referred to information contained in Board's Exhibit No. 1 but I will reserve decision upon the motion to amend paragraphs 23 and 24, the motion relative to paragraph 22, adding "semi-colon" after the word "solicitors", in the last line, bottom of page seven is granted.

**Judge Ransom:** No question about that matter of punctuation? I assume that was purely a typographical error because some of the copies we received had it and some did not, and I regard the matter as of no moment.

**Trial Examiner Gates:** Proceed.

1228

*Martin A. Wersing—For N.L.R.B.—Direct*

Mr. Moscovitz: Judge Ransom, do you want any of the witnesses that we had on the other day, or shall I proceed with the next witness?

Mr. Ransom: Not today, unless you feel it is important. I am entirely willing you should clear up the other witnesses and get rid of them.

Mr. Moscovitz: I will call Mr. Wersing.

1229

MARTIN A. WERSING; called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

*Direct Examination:*

Q. (By Mr. Moscovitz) What is your full name please? A. Martin A. Wersing.

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Q. Where do you live? A. At present at No. 170 Hicks Street, Brooklyn.

Q. By whom are you employed at the present time?

1230

A. By the Utilities Division of the United Electrical and Radio Workers of America.

Q. Is that an organization affiliated with the C.I.O.?

A. It is.

Q. That is the Committee for Industrial Organization? A. That is correct.

Q. What is your position with the organization? A. I am chairman of the field representatives.

Q. What are your duties as chairman? A. The Utilities Division—

Judge Ransom: Objected to as immaterial.

Trial Examiner Gates: He may answer.

Judge Ransom: Exception.

A. The Utilities Division of the United Electrical and Radio Workers of America is at the present time conducting an organizational drive, in the utilities throughout the country. That is at the present time what we are doing. It is now the major part of our work. It has at the present time a large staff of organizers and representatives throughout the country. It is my job to correlate the field work of these representatives; to set up branch offices; subregional offices and so forth.

S. M. 371.

1232

Q. (By Mr. Moscovitz) When have you been chairman—since when have you been chairman of that division? A. Since its formation two weeks ago today.

Q. What position did you hold immediately before becoming chairman of the division? A. I was president of the Utility Workers Union, local 1212, of the United Electrical Radio Workers.

Q. How long were you president of that local? A. Since its formation on or about March, 1937.

Q. What position did you hold before that? A. I was president of the organization which was the present local's predecessor, local B-752 of the International Brotherhood of Electrical Workers.

1233

Q. As president of the local of the United Electrical Radio Workers, will you tell us what your duties were?

A. Well, they were many and varied. Generally, briefly, my duties in the present local were to look after the general well being, interest of the membership at large, to at the same time participate in organization work as an organizer, and to be more or less directly in charge of the Manhattan end of the organizational work; to conduct and officiate at meetings of the local union membership executive committee; and other committees.

1234

*Martin A. Wersing—For N.L.R.B.—Direct*

Q. What geographical area did the local cover? A. All of that part of the city of New York and the metro-

S. M. 372

politan area which is served by Consolidated Edison and its affiliated companies.

Q. Was the local one which only had within its membership employees of the Consolidated system? A. Either employees presently or formerly.

1235

Q. And when you say "employees formerly", do you mean persons who had been formerly employed by the Consolidated System but who are now employed elsewhere? A. No, to the best of my knowledge, all of the members who are not presently employed by the Consolidated Edison are unemployed or temporary employees with the W.P.A. or something like that.

Q. You became affiliated with the United Electrical Radio Workers as I understand your testimony in March, 1937. Is that right? A. That is correct.

Q. Were you at that time affiliated with the C.I.O.? A. Prior to our affiliation with—

1236

Q. At the time you became affiliated with the new U.E.R.W.? A. No, we were not.

Q. So that when you first became affiliated with the United Electrical Radio Workers, there was no affiliation with the C.I.O.? A. That's right, correct.

Q. When did you receive your charter from the United

S. M. 373

Electrical Radio Workers? A. On the night of March 19, 1937.

Q. I see. And did you operate from that time on under a constitution and by-laws? A. Yes, we operated under the constitution and by-laws of our parent organization, the United Electrical and Radio Workers.

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Q. And are you still operating under that constitution and by-laws? A. We are.

Q. And when, then, did you become affiliated with the C.I.O.? A. Our affiliation with the C.I.O. was automatic. The United Electrical and Radio Workers is a part of the C.I.O. and our affiliation with it automatically affiliated us with the C.I.O.

Q. Is this a copy of the constitution and by-laws of the United Electrical and Radio Workers of America under which your organization is operating and has been since March of 1937? A. It is.

1238

Mr. Moscovitz: I offer this, Mr. Examiner.

Judge Ransom: I object to that as incompetent.

• Trial Examiner Gates: It will be admitted.

• (Document referred to marked Board's exhibit No. 8 for identification received in evidence, Witness Wersing.)

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Q. (By Mr. Moscovitz) You were formerly employed by the Consolidated Edison System, were you not? A. Yes, sir.

1239

Q. What company? A. By the New York and Queens Electric Light and Power Company.

Q. In what capacity? A. As a second-grade clerk.

Q. And until what date were you so employed? A. November 29, 1935.

Q. At the time you were last employed by the company were you a member of any labor organization? A. I was.

Q. What organization? A. The Brotherhood of Utility Employees of America, Queens Local No. 103.



1240

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Q. Was that organization affiliated with any other body? A. It was not.

Q. What is it, was it known as an independent organization? A. It was.

Q. Did the organization have within it employees of companies other than companies of the Consolidated Edison System? A. It did not.

Q. Was it a local organization geographically speaking or was it national? A. The parent body, the Brotherhood of Utility Employees of America was, in effect, a

1241

S. M. 375

national organization having local unions in several parts of the country as well as New York.

Q. And your local was in existence only in the Metropolitan area? A. That is correct, its jurisdiction covered merely the properties of the New York and Queens Electric Light and Power Company.

Q. No other? A. No other.

Q. And only the employees of that company, is that right? A. That is correct. However, it was permissible for us to give temporary haven to employees of other companies in Queens until such time as a local of their own was formed.

1242

Q. What was your position with the independent organization at the time you last worked for the company?

A. I was general manager of the local union and president of the New York Regional Board of the Brotherhood of Utility Employees.

Q. What was the New York Regional Board? A. That was a joint board consisting of representatives from the various locals in the Consolidated Edison System and in the metropolitan area in other Utility companies.

Q. How long were you general manager of the local and president of the Regional Board? A. I was general manager, I would say, roughly for a period of several

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months only, I was president of the regional Board from its formation which was probably for a period of about a year.

Q. When was it formed? A. Sometime in 1935.

Q. About April? A. Probably April or May.

Q. Did you continue as president of the New York Regional Board in the Brotherhood up until the time you left the employ of the company? A. I did.

Q. And were you president at any time after leaving the employ of the company? A. I was president until it went out of existence.

1244

Q. When was that? A. That was in April, 1936.

Q. Did it go out of existence at that time or did it become part, as a result of reorganization, of another labor organization? A. Well, at that time, we went into the American Federation of Labor and reorganized the set up of it, the structure of the local unions in the Consolidated Edison System, and while we incorporated in the new structure some of the thoughts and ideas behind the joint board, the joint board itself did not continue in existence in any form.

1245

S. M. 377

Q. When you say that you became affiliated with the American Federation of Labor, do you mean the International Brotherhood of Electrical Workers? A. That is correct.

Q. Do you recall the date? A. On or about April 23rd, 1936.

Q. Did you receive and accept a charter from the I.B.E.W. at that time? A. We did.

Q. And did you from that time hold any official position with the I.B.E.W.? A. Yes, I was president of the Local union.

1246

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Q. What was the local? A. No. B-752.

Q. How long were you president of that local? A. For the period—rather, for the period in which we stayed in that local union which was from the date of its formation until about March 19th, 1937.

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Q. That, then, would be approximately for one year, is that right approximately? A. Approximately, yes.

1247

Q. As president of that local, can you tell us whether or not you had within your membership employees from companies other than Consolidated Edison Company—Consolidated Edison System companies? A. No, we did not.

Q. Was it the same geographically as you have already described it? A. Correct.

Q. The metropolitan area? A. That is right.

Q. And after March, 1937 did you continue as president of the local of the I.B.E.W.? A. No, after March, 1937, we went into the C.I.O., so I did not continue as president of that organization.

1248

Q. Now, until the time you became affiliated with the C.I.O., speaking of the period from your last day of employment with the company, until you went with the C.I.O., did you receive any salary from either the Independent Brotherhood or the I.B.E.W. in return for your official work?

Mr. Ransom: I object to this whole line as related to the period subsequent to the termination of employment of this witness by the New York, Queens Electric Light & Power Company and not within any of the issues.

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Trial Examiner Gates: You may answer.

Mr. Ransom: Exception.

The Witness: I am not on a salary basis with the Independent Union, at the time we went into the American Federation of Labor, that is, into the International Brotherhood of Electrical Workers, arrangements were made for me to go on a full-time paid position and the rate was \$25 a week. That started on or about March 1, 1936.

1250

Q. (By Mr. Moscovitz) And did that continue throughout the time that you were affiliated with the I.B.E.W.? A. That's correct.

Q. Have you been working on a salary basis with the United Electrical Radio Workers? A. I have.

Q. And what was your salary then with the United Electrical and Radio Workers? A. Well, working on full time as president of the local union I was receiving \$25. a week, since then as chairman of the field representatives, the Utility Division of that organization, I am receiving a salary of \$40. a week.

Q. And that is your salary at the present time? A. That is correct.

1251

Q. Do you recall the date when that change in salary became effective? A. On or about May 31st, 1937.

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Q. And up until the time you began working at a salary of \$25. a week, was all of your work free? A. That's correct.

Q. And all of the labor work that you have been describing so far this morning took place after you left the employ, or after the severance of your employment

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relationship with the Consolidated Edison System, is that right? A. I am afraid I don't get the question. My work as president, as an official of the local union, started before my connection with the company was severed.

Q. But at the time your relationship with the company was severed you were with the Independent Brotherhood? A. That's correct.

Q. And the other discussion regarding the I.B.E.W., and U.R.E.W. came afterwards, is that correct? A. Yes, sir.

1253

Mr. Ransom: I move to strike out all the testimony relating to the period after the termination of this witness' employment on November 29, 1935.

Trial Examiner Gates: It may stand.

Mr. Ransom: Exception.

Q. (By Mr. Moscovitz) Now, at the time you were president of the local, affiliated with the International Brotherhood of Electrical Workers, which is affiliated

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1254

with the American Federation of Labor, you operated under a constitution and by-laws, did you not? A. We operated under a constitution, we never were able to get our by-laws officially okayed by the International office, so we were compelled to operate without their benefit.

Q. But the constitution under which you operated also contained certain rules for local unions under its jurisdiction, did it not? A. That is correct.

Q. And did you also work under the same constitution, while you were a member of the I.B.E.W.? A. That is correct.



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1255

Q. And is this the constitution which also contains rules for local unions under its jurisdiction to which you have just referred?

(Document passed to the witness.)

A. Yes, I believe that is the last edition of the regular constitution of that organization.

Mr. Moscovitz: I offer that, Mr. Examiner.

Trial Examiner Gates: Wasn't that marked for identification?

Mr. Moscovitz: It was withdrawn.

1256

Mr. Ransom: What is the purpose of this offer?

Mr. Moscovitz: I offer it, Mr. Examiner, to

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show that the International Brotherhood of Electrical Workers, of which this gentleman was a member and in which he held an official position, is a labor organization within the meaning of the statute. I also offer it so that the Board may have before it a complete picture of all of the labor organizations involved in this proceeding.

1257

Mr. Ransom: I object to the offer on the grounds that it is incompetent, no proper foundation laid, not within any issues tendered by the complaint as it stands, and on the grounds that if the complaint is permitted to be amended so as to bring a Section 8 subdivision 2 cause of action within the scope of paragraphs 23 and 24 of the complaint, that there is a fatal defect of parties necessary to a valid proceeding in that the labor organization to which this proposed exhibit relates is not a party to this proceeding.

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Trial Examiner Gates: I will reserve decision on it.

Mr. Moscovitz: May I then have it marked for identification?

Trial Examiner Gates: Yes.

(Document referred to marked Board Exhibit No. 9 for identification, Witness Wersing.)

1259

Q. (By Mr. Moscovitz) When did you first become a member of the Independent Brotherhood? A. February, 1934.

Q. At the time you became a member of the Inde-

S. M. 383

pendent Brotherhood, were you a member of any other labor organization? A. I was not.

Q. Do you know whether or not there were any other labor organizations within the Consolidated Edison System at that time? A. None that I have ever heard of.

Q. Were you one of the organizers of the Brotherhood, the Independent Brotherhood? A. Not of the National, what was subsequently the National organization.

1260

Q. Were you an organizer of the local of the Independent Brotherhood? A. I was.

Q. Were there any other organizers? A. There were.

Q. Within your company? A. That's correct.

Q. Who were they? A. In the Queens Company those who worked with me organizing the local, there were Jack Schultzer; J. A. Greulick; Edward Axien; Alfred Wrench.

Q. Did you become affiliated with the Independent Brotherhood after certain organizational activity? A. The local union?

Q. Yes. A. Yes.

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Q. How long prior to your affiliation with the Independent Brotherhood did you take steps to organize the local? A. I did not—I first affiliated as an individual with the National organization and while in there, met these men that I have just mentioned and we, working together, proceeded to organize this local.

Q. And were they at the time you met them, members of the Independent Brotherhood, too? A. They were.

Q. Did you have—strike that out, please. Did you have officers of the local, of the Independent Brotherhood? A. We did.

1262

Q. Who were they at the time of your first official meeting? A. They were myself as temporary president, Edward Axien as vice-president, Jack Schulter as secretary. Then, in addition, we had something of an executive board and on that was Mr. Greulich, with possibly one or two others whose names I do not recall.

Q. Do you recall the date? A. In July, 1934, we organized this local and held the first meeting of it.

Q. Did the persons whom you have already named continue as officers of the Independent Brotherhood? A. They did.

1263

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Q. Of the local? A. That is correct.

Q. And in the same official positions which you have already named? A. Yes, up until the next election, when there was some change.

Q. When was the next election? A. In February, 1935.

Q. And what were the changes? A. Mr. Schulter and Mr. Axien were not continued in their previous official position. On or about that time Mr. Schulter became

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head of the publicity department of the union and Axien relinquished his office.

Q. Who got their positions? A. William Aycock was elected vice-president, and Alfred Wrench was elected secretary.

Q. Were those the only changes? A. Well, there were additions made at that time.

Q. Do you recall the additions? A. Which consisted of William J. Kennedy, Michael A. Wagner, Henry Dunham, and I believe one or two others at that time.

1265

Q. What were the positions? A. Michael A. Wagner was elected as treasurer, and the rest of them were executive board members along with Mr. Greulich.

Q. Do you recall the date? A. Not exactly, no, Feb-

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ruary, 1935 is as near as I can place it.

Q. Yes, and did those gentlemen continue in those offices for any period of time? A. Yes, they did.

Q. What period of time? A. Practically all of them up until the time the local was changed.

1266

Q. Which was— A. That was our last election. We never had another election until we came into the I.B.E.W.

Q. Which was when? A. Which was in April, 1936.

Q. Yes. And during that whole period of time until April, 1936, were you the president of the local? A. No; I changed office during that time. A convention of the National organization was held and Mr. Kennedy was elected president of the National organization.

Q. When was that? A. That was in August of 1935.

Q. Yes. A. And that made it necessary for him to relinquish his job as general manager, and I took the job over and operated it at the same time as president of the Joint Board.

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Q. Then, there were no other changes in any of the

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official positions until the affiliation with the Independent Brotherhood of Electrical Workers. Is that right?

Mr. Ransom: You mean the "International Brotherhood?"

Mr. Moscovitz: Yes, excuse me, the International Brotherhood.

A. I have a note in my book. I wonder if I might look at it. I think I am skipping one or two individuals who were elected to office. Some time between the election in February, 1935 and the time we went out of existence as a local union in April, 1936, there were added to the executive board the following:

1268

Alfred D. McGeehan; Melvin Sweeney; John Emler; John Young, and Harry Howard. Harry Howard took the place of Alfred Wrench, who was discharged or laid off as secretary of the union.

Q. When was that change? A. Exactly when, I don't know. Mr. Wrench was laid off in August, 1935, he went to work on some relief project in December, or something like that, of the same year, had to give us his active duties in the union.

1269

Q. Those were the only additions or changes. Is that right? A. That is correct, to the best of my knowledge.

Q. Now, during the period of time about which you have been testifying, up until reorganization and affiliation with the I.B.E.W., can you tell us whether or not

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there were any labor organizations within the Consolidated Edison System? A. None that ever made—wait a minute. There was one other that made itself known



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after our National Independent Union got started. That was an organization of the International Brotherhood of Electrical Workers, Local Union No. 128. Not much was heard of them, and it was not in existence anywhere so far as I know, except in one or two departments in the company in Manhattan, or possibly the Bronx.

Q. What companies would that be? A. That would be at that time the New York Edison, or the United Electric.

1271

Q. When did you first hear of the existence of that organization? A. Oh, I suppose five or six months after I joined, some time late in the year of 1934.

Q. Do you know whether or not during that period of time there was also in existence within the system, an employee representation association? A. Yes, I heard of the first one of its kind which came into existence in the New York Edison Company, I think, late in 1933, and we in the Queens Company, had a similar organization come about in March or April of 1934.

Q. And do you know whether or not that employee representation association continued all during the period

1272

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of time that you were employed by the company? A. It did.

Q. Were you a member of it? A. I was, for a short period, yes.

Q. When did you become a member of it? A. Approximately at the time of its formation, possibly in April of 1934.

Q. And how long did you continue in membership?

A. I resigned as of January 1, 1935.

Q. Did you, during the period of time during which you were a member, hold any official position with the employee representation association? A. No, I did not.

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Q. Just a minute. Were you just a plain member?

A. That is correct.

Q. Did you engage in any of its activities? A. I did.

Q. Were you a member of any committees? A. No. I was candidate for an office in it, that's all.

Q. When you say that you were engaged in some of its activities, what do you mean? A. Well, after the election was held, we, I was off with a group of people working at night. We were out of contact with most people. We had many grievances, so I was more or less in charge of bringing our grievances to the attention of the company

1274

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union representatives to see whether or not we could get any action. I also prepared a petition to be presented through the company union to our chief, describing some of these grievances and our proposal to have them rectified.

Q. When you make reference to the company union, do you mean the employee representation plan association? A. I do.

Q. Do you use those terms interchangeably? A. I do.

Q. What time was it, if you recall, or when was the date that you took these matters up, took steps to have these matters brought up? A. At various times between the time I joined it and left. I don't know exactly. I don't remember whether this petition was prepared and signed, and then was shunted back and forth for a good many weeks without any real action being taken, and the wind-up was that the council men were afraid to take it to the chief, so it sort of died its death right there.

1275

Q. Who was the chief? A. J. J. Smith. I believe his title at that time was accountant.

Q. Accountant? A. He was the head of the Consumers Accounting Department.

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Q. Was that in your company? A. Yes.

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Q. Who was the committee? A. Pat Carey was the chairman of the committee and Ralph Pedersen, I believe, was a member; Joseph Nieman; Charles Mahoney, and Victor R. Moore.

Q. What part did you have to play on that committee, any? A. None whatever. That was the regularly elected company union committee and all I did was to take matters up with them.

1277

Q. Did you take matters up with them as an ordinary member? A. Yes.

Q. Were there other men who were ordinary members who did the same thing from time to time? A. I would judge that there were. It was quite the usual thing to get hold of one of the committeemen and insist that such and such a thing be done.

Q. Did you follow through your grievance to its conclusion? A. Yes.

Q. And can you give us the period of time, approximately, and the dates when you were engaged in following through this grievance? A. No—I—

1278

Judge Ransom: I shall object to this question and this whole line of testimony. It does not seem to me that it is within any issue tendered by the complaint. There is no allegation here with respect to this system of electing representatives, in

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which members of all labor organizations or no labor organizations participated freely. There is no charge in the complaint that this electoral system was a company union; no charge in the complaint that it is still in existence; no claim that this

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man was discharged because he belonged to it; wholly outside any issues tendered by this complaint.

Trial Examiner Gates: The line so far seems admissible. Objection overruled.

Judge Ransom: Exception.

A. I don't recall the exact period when this matter of drawing up a petition asking for increased wages and let down in the amount of work that was given us, was started. It did, as I recall, cover a period, however, of a good many weeks. It was necessary to draw it up and take it around and have it signed, then get one of the committee members to bring it up before the council, and we did not hear anything on it for a week or more, and we discovered that the man who had it was afraid to bring it up before the council.

1280

Q. (By Mr. Moscovitz) Who was the man who had it?

Judge Ransom: I move to strike this out as wholly incompetent and in no way binding upon the respondents, indefinite, dates aren't fixed. Such matters merely occupy time and could be of no probative force.

Trial Examiner Gates: The points raised, Mr.

1281

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Ransom, seem to be pretty well taken. He may continue.

Judge Ransom: Exception.

A. I don't know who the name of the secretary was at that time. He is the man who had it and he finally did bring this up after repeated urging and the expected thing was that the committee would be selected from the council and taken before J. J. Smith, the head of the department. To the best of my knowledge, that was never

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done. They never gave us any written acknowledgment as to why their actions were what they were. They merely said, by word of mouth to me and others, that they thought we were asking for too much money, to which we pointed out that it wasn't their job to tell us how much money we were worth. It was their job to go and see what the company could do about it.

1283

Judge Ransom: I move to strike out the answer as wholly incompetent, not within any possible issue in this proceeding. It is vague and indefinite, and of no probative force, in no way binding upon the respondents.

Trial Examiner Gates: It may stand, but I suggest that the point in connection with the dates named be cleared up.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Can you give us the year when this petition was being presented? A. Yes, 1935.

Q. You say 1935? A. That is correct.

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1284

Q. And do you recall what months? Can you tell us whether or not the petition was submitted in the early months of 1935 or the later months of 1935? A. No, I would fix it approximately in the month of August or September.

Q. And would you fix, then, the period during which this petition was being submitted and discussed as a period following or September, 1935? A. Well, if it was first introduced in August it hung around until it came back to me for a period of two months, making it running into September, it was introduced in September, it continued until November.

Q. And the only point in the petition was wage increase, is that right? A. And adjustment of other, wage



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increases, and the lessening of work, I believe was the two points covered.

Q. And none of these points raised in the petition were adjusted, is that right? A. That is correct.

Q. Now, when you testified before that you ran for office in the employee representation association, can you tell us whether or not at the same time you were an officer of the Independent Brotherhood? A. No, I was not.

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1286

Q. Were you a member of the Independent Brotherhood? A. I was.

Q. When was it that you ran for office of the employee representation association? A. In April, I believe, either in April or May of 1935.

Q. What office was it that you ran for? A. Just a bureau representative.

Q. Did you run for it by the filing of application, or were you nominated by some one from the floor? A. The manner in which these nominations were held was through letters, as I have forgotten just exactly how it was, however, you were not nominated at a membership meeting, the men in my division nominated me on a blank ballot which was provided for that purpose.

1287

Judge Ransom: A nomination by petition, wasn't this, signed by employees, they signed up a petition to nominate you?

The Witness: I am a little hazy on just how that was done in the first election, whether it was by petition or by ballot.

Q. (By Mr. Moscovitz) And do you recall when that was? A. That was at the time of the formation of the plan in April or May of 1935.

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Q. Were you defeated for that office? A. In '34, rather.

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Q. '34? A. Yes.

Q. Were you defeated for that office? A. I was.

Q. That was in 1934, is that right? A. That is right.

Q. Did you ever hold any office with the plan? A. I did not.

1289

Q. Did you take any other active part in the plan outside of following the petition through and running for that particular office? A. I did not.

Q. Did you at any time, before your relationship with the company was severed in November, 1935, bring to the attention of the company yourself the fact that you were a member and officer of the Independent Brotherhood? A. I did, I wrote a letter in resigning from the company union, I wrote a letter to the chairman of my council, informing him that I was resigning and why.

1290

I also wrote a letter to Mr. J. J. Smith, the chief of my department, informing him that I did not see any tangible benefits to the employees from the company union, that I intended to resign from it and to devote all my energies towards building an independent union and showing him that I would in no way allow my activities on behalf of the Independent Union to interfere with my

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work as an employee in his department.

Judge Ransom: I move to strike out the answer as incompetent, self-serving, in no way within any issue here, no charges made here or complaint against this employees representation, against the electrical system representation—

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**Trial Examiner Gates:** Who is Mr. Smith?

**The Witness:** Mr. Smith was the chief, the head of the department in which I worked, Consumers Accounting.

**Trial Examiner Gates:** Will you state his initials, please?

**The Witness:** Pardon me?

**Trial Examiner Gates:** State the initials or the name.

**The Witness:** J. J. Smith.

**Trial Examiner Gates:** The motion to strike is denied.

1292

**Judge Ransom:** Exception.

**Q. (By Mr. Moscovitz)** When was it that you brought this fact to his attention? **A.** In December of 1934, I believe it was, I sent him a registered letter informing

**Judge Ransom:** Exception.

him of my intentions to which I received a receipted return.

**Q.** Did he communicate with you at any time after that regarding your statement to him? **A.** Nothing other than his letter of acknowledgment.

1293

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**Q.** How soon after you sent the letter did you receive a letter of acknowledgment?

**Judge Ransom:** I object to this, it is obviously remote, it is to the year before the discharge and there is no claim that the termination of employment in any way related to what the witness did or did not do or the question of employees election of their representatives for collective bargaining, wholly too remote.

**Trial Examiner Gates:** Objection overruled.

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The Witness: I believe it was within a week or ten days after I sent my letter that I received the reply.

1295

Q. (By Mr. Moscovitz) Yes, and what was that, did the sending of your letter to Mr. Smith fix the time when you last were associated in any way with the employee representation association? A. No, my letter of resignation followed my letter to Mr. Smith and just exactly how closely I don't know, but it was dated January 1, 1936, the letter of resignation.

Q. To the employees representation association? A. Yes.

Q. And after January, then, of 1936, you had no other connection with it, is that right? A. That is right.

Q. You attended no meetings or engaged in no activities, is that right? A. That is right.

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Q. Did you, then, until November, 1935, when you were last employed by the company, spend your time exclusively outside of your regular employment? A. That is right.

1296

Q. In the Independent Brotherhood of Utility Employees? A. That is right.

Q. Now, during that time, can you tell us whether or not you at any time took any questions up with management? A. Yes, the first question I believe that was taken up with the management was the one involving myself, in what our local union thought to be undue discrimination.

Q. When was that? A. That was in, I believe, March or April of 1935. At that time I was working on the night division and had tried several times to get a transfer to regular day job unsuccessfully. I made application for a particular job which I thought I had the quali-

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fications for, and while I received, I believe, a letter acknowledging receipt, no—no, I did not receive anything on that—however, a man who worked with me who had three or four years less seniority than I—

Q. What was his name? A. James Gorman, he received the job and I could find out or I could think of no reason why he should receive it.

S. M. 400

Judge Ransom: Just a moment, I object to this line of inquiry, not within any issues tendered by the complaint and charge, there is no issue here of discrimination and treatment of employees.

1298

Trial Examiner Gates: Objection overruled.

Judge Ransom: Exception.

The Witness: So I brought the matter before the executive board of the local, with the result that they appointed a committee consisting of Mr. Grulich and myself to seek an appointment with Henry L. Snyder, president of the New York & Queens Electric Light & Power Company.

Q. When was that? A. I believe that was in March, the early part of March, 1935, we sought this appointment and it was granted.

1299

Q. You sought what? A. I mean this conference.

Q. Yes. A. And it was granted. Mr. Snyder listened to what we had to say concerning the case and informed us that he did not believe that any discrimination was involved, that there must have been some other explanation for it. I left him a copy of my service record and qualifications and so forth, and my reasons for believing I should have gotten this job, and that I had been discriminated against because I did not get it. He prom-



1300

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S. M. 401

ised that he would write me and let me know just why I had not received consideration for the job. I received a letter from him two or three days later, in which he stated that owing to the fact that I had submitted my application for this job on the sixth day, it had not been considered, that as far as any one I have ever spoken to about it is concerned, that is the first time they have ever, the personnel department, ever held it down to where it was an exact five days. I had submitted my application—

1301

Judge Ransom: I object to this, wholly aside from any issue here, there is no claim against any of the respondents of discriminatory treatment of employees, the issue here is discharge of six employees, of whom this witness is one.

Trial Examiner Gates: Objection overruled.

Judge Ransom: Exception.

The Witness: I submitted my application on the fifth night, I believe, and it probably got into the hands of the personnel on the sixth day. However, it was properly dated, and so forth.

1302

Q. (By Mr. Moscovitz) You handed it in, then, on the fifth night of the five-day period? A. That is right, yes.

Q. Did you take this matter up with the management in the name of your labor organization? A. I did.

S. M. 402

Q. And did you make it known to the representative of management with whom you spoke that you were a committee of the labor organization? A. We did.

Q. Were any persons outside of yourself and Mr. Grulich in attendance at that meeting? A. Mr. Porter, whose title I don't exactly know, I believe he is assistant

to the president, was one at that time who was in attendance.

Q. In addition to whom? A. In addition to Mr. Schneider and Mr. Grulich and myself.

Q. All right, do you recall Mr. Porter's first name?

A. No, I don't, Russell, I believe.

Q. Have you fixed the time when this took place? A. Exactly, no, as I recall it, however, it was in the early part of March, 1937 or, rather, 1935.

Q. Was that the last time you spoke with those gentlemen on that question? A. That was the last time I had any occasion to see Mr. Schneider. 1304

Q. Did you at any time after that meeting and before November, 1935, have occasion to take any other question or questions up with the management? A. I believe in May, 1935, it was I directed a letter to Mr. Schneider pointing out what had been reported to the

S. M. 403

local union as discrimination on the part of other branches of the management, particularly in connection with a company union plebescite, and whether or not the plan was to be continued or it was to be dropped by the employees. This took place in May of 1935, I believe. 1305

Judge Ransom: I move to strike it out, strike out the answer as wholly outside of the issues tendered by the complaint.

Trial Examiner Gates: The motion is overruled.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Who signed the letter? A. I did.

Q. Any one else? A. That is all.

1306

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Q. And was it signed as president of the Utility employees? A. That's right, the local union.

Q. What local union was that? A. Queens Local 103.

Q. What was the plebiscite to which you referred?

A. At a general meeting of the representatives of the plan, on the properties of the company, a motion was introduced.

Q. Where was this? A. In the Central Service Station in Flushing, Long Island.

Q. Yes, go ahead. A. The motion was introduced,

1307

S. M. 404

I believe, in which a considerable number of employees expressed doubts as to whether or not the plan was worth continuing and worth supporting. They decided to put it on the ballot to see whether or not the employees wished to continue. This was done. It was a result of a number of incidents that occurred during the campaign preceding the actual vote that my letter was concerned.

Q. And did you refer to any other problems in your letter to management of May, 1935? A. I think not.

1308

Q. Did you request an audience so that you might discuss the question? A. No, not that I recall. We merely referred Mr. Schneider to a letter that he himself had written and posted on the bulletin board in which he said that the management's policy was one that would keep it from interfering in any way with the employees' choice or non-choice of a union. This we believe to have been violated by the actions of different branches of the management and so directed our letter. We did not ask for a conference, however, any further, we requested that he make himself familiar with them and rectify them.

Judge Ransom: I move to strike out the answer as hearsay and incompetent and wholly outside any issue tendered in the complaint.

S. M. 405

Trial Examiner Gates: The motion to strike is denied.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Did you receive an answer to that letter? A. We did not.

Q. Did you take the question up with him again? A. We did not.

Q. At the time you sent that letter of May, 1935, had your organization discussed with management the question of whether or not a contract to your employees should be negotiated? A. We had not.

1310

Q. Was your organizational work still continuing at that time? A. It was.

Q. Was it only within your own company, or was it extending to other companies? A. No, our organizational work was confined to the New York and Queens.

Q. No steps were being taken at that time in any of the other companies, is that right? A. Other locals of the Brotherhood of Utility Employees were similarly active in their particular companies.

Q. All affiliated with the same Independent International, is that right? A. Yes.

1311

S. M. 406

Q. Or National, rather? A. Yes, National.

Trial Examiner Gates: We will take a short recess.

(Whereupon, a short recess was taken.)

#### AFTER RECESS.

Q. (By Mr. Moscovitz) You made some reference before in your testimony, Mr. Wersing, to a petition which you followed through while you were a member of the

1312

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employee representation association, and you gave the date as 1935. Is that the correct date? A. No, as I recall it now, it should be 1934.

Q. 1934? A. Yes. I was not a member of the plan in 1935.

Q. Yes. The same months, though? A. The same months, yes.

Q. All right. The time you last testified about, when you were in contact with management, you were also actively engaged in your organizational activities. Is that right? A. That is correct.

1313

Q. Were other members actively engaged with you in the same kind of activity at that time? A. That is correct.

Q. Do you recall who they were? A. Yes, all of those I previously listed as having been elected to some office

S. M. 407

or to the executive board, at one time or another, were very active, in addition to a number of other men.

Q. And did that activity, by those men and yourself, continue until your new affiliation with the I.B.E.W.? A. That is correct.

1314

Q. Did you, after May, 1935, take any other question up with the management, as a representative of the Independent Brotherhood of Utility Employees? A. Yes, we took, we had another occasion to go to the management in reference to the discharge of one of our members, a James Mannix.

Q. When was that? A. That was on or about November 15, 1935.

Q. Was that before or after you severed your relationship with the company, or your relationship with the company was severed? A. That was just prior to the severance.



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1315

Q. Do you recall the exact date? A. Approximately November 15th. As I recall it, we submitted a report to the Local on the matter dated November 20th or 21st.

Q. What was the exact date of the severance of your employment? A. November 29, 1935.

S. M. 408

Q. Yes. Who, in addition to yourself, presented this question to management? A. Mr. Grulich.

Q. No one else? A. No one else.

Q. And to whom in management did you present this question? A. Mr. Dean, Harold C. Dean, I believe is the full name, who was at that time vice-president of New York & Queens Electric Light & Power Company. 1316.

Q. Did you or Mr. Grulich make the appointment?

A. I believe Mr. Grulich made the appointment.

Q. Yes. Did you see him once or more than once? A. Just once.

Q. In his office? A. In his office, yes.

Q. Did you take the matter up, with him in the name of your organization? A. We did.

Q. Was it in writing at all before you went to see him, or verbal? A. I believe the appointment with him was made through his secretary over the telephone. 1317

Q. And then you went to see him, didn't you, is that right? A. Yes.

Q. And did both you and Mr. Grulich discuss this

S. M. 409

question with him? A. We did.

Q. What was the question you discussed with him?

Judge Ransom: I object to this as wholly outside of any issue tendered by the complaint. There is no charge or no complaint here involving one Mannix.

1318

Trial Examiner Gates: He may answer.

Judge Ransom: Exception.

A. Mr. Mannix reported to us that he had been discharged from his job in the company and said that he had been framed. His story or, rather, we had made an appointment with him, to speak more at length on the matter, we thought more fully the circumstances surrounding his discharge, but he didn't show up to keep the appointment. That made us somewhat wary of just how accurately he might have described the circumstances surrounding his discharge, and we felt it would be best for the local if we interviewed management and ascertained for ourselves just what their side of the story was.

1319

Judge Ransom: I move to strike out the entire answer as in no way binding upon the respondents or within any issues here, wholly hearsay, expression of opinion, mingled with a lot of hearsay.

Trial Examiner Gates: Motion to strike is denied.

Judge Ransom: Exception.

S. M. 410

1320

A. So we made the appointment or, rather, we kept the appointment, and we told Mr. Dean the reason for our presence. Mr. Dean was something less than friendly and cooperative, despite the fact that we—

Judge Ransom: I move to strike out the characterization. The witness is not an expert on human temperament, and is not offered as such.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

A. We explained, as I said, our reason for being there, and after some conversation, which did not seem to be getting us anywhere, Mr. Dean finally did say that the management let Mr. Mannix go for the good of the service, and further than that he would not discuss the

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1321

situation, but one other thing, concrete statement was made, as I recall it, by Mr. Dean, and that was that Mr. Mannix's supervisors were also either dismissed or demoted as a result of the circumstances surrounding Mr. Mannix's discharge.

Q. Did he make any reference as to what those circumstances were? A. He did not.

Q. Did you have anything to say to Mr. Dean? A. In reply to Mr. Dean's question as to what right we had to be up there representing Mr. Mannix, I informed him that I was an official of the union, president, at that time.

1322

S. M. 411

But Mr. Grulich was an executive board member, and we had the duty, not only the right, but the duty, to do whatever we could in the interests of our membership. For that reason we were there.

Q. What was his statement regarding that? A. I don't believe there was any further statement by Mr. Dean on the point then.

Q. Did you have anything further to say? A. Not particularly, no.

Q. And did you have anything—did you have any further conference with him about Mr. Mannix? A. We did not.

1323

Q. Was that the last conference you had with Mr. Dean? A. That's right.

Q. Did you, between that date and the day in November, when your relation with the company was severed, have conferences with any other representatives of management? A. Yes, I eventually received a transfer to day work.

Q. When was that? A. That was in May, 1935.

Q. Now, this conference that you had with Mr. Dean, as I understand it, was in November, 1935. Now, was this conference or discussion that you are going to tell

1324

*Martin A. Wersing—For N.L.R.B.—Direct*

us about now, one which took place between your conference with Mr. Dean in November, 1935 and the last day you worked for the company in November, 1935? A. I

S. M. 412

believe the conference and the letters which I am desirous of describing now commenced before the appointment with Mr. Dean and continued shortly thereafter.

Q. Shortly after the November conference with Mr. Dean about which you have already testified? A. That's right.

1325

Q. Will you tell us about that? A. As I say, I did receive a transfer to day work. I discovered after I got the job—

Q. Was this transfer to day work a transfer made at your request? A. The usual notice of vacancy had been posted on the board.

Q. When was this? A. Probably in April, shortly after our conference with Mr. Sneider on my failure to get this other job which I tried for.

Q. Was this in April, 1935? A. Correct.

Q. Yes. A. The job that I took, and I discovered after I got it, was one that had been held for a first grade clerk, and I was given the second grade rating on it. Rather, my second grade rating was continued in this, what had formerly been a first grade job. I spoke with my immediate supervisor—

1326

S. M. 413

Q. Who was that? A. Harold Locke, who was head of the stores accounting, stores accounts division, into which I had been transferred, about this, and he took the matter up with various higher officials in the auditing department, of which the stores accounts division was a part.

However, nothing came of it, and I started correspondence and discussion with the personnel bureau.

Q. Who were the personnel bureau? A. Mr. M. D. Smith.

Q. Do you recall when it was that you started this correspondence with him? A. August, I believe, 1935.

Q. Yes. A. In the course of the negotiations with Mr. Smith to have my rating changed, I sent him a number of letters, certain petitions, on the work I performed, how much time I spent on various phases of it, and had, I believe, two different conferences with him. The result was that he repeated in writing what he had previously said, that my rating would not be changed, would be continued.

1328

Q. What was his job with the company, you say that he was in the personnel? A. In the personnel bureau, and I don't believe he was head of the personnel, but he

S. M. 414

was one of the higher officials in the personnel and he was also chairman, I believe, of the reclassification committee for the management.

Q. Now, did you do anything further about it? A. No, they got rid of me too quick to do anything further about it. I had received my last letter from Mr. Smith on this matter some time about the middle of November.

1329

Q. 1935? A. That's right.

Q. Well, did you get the transfer from night work to day work? A. I had gotten that, yes, sir.

Q. And when was it that you got that? A. That was in May, 1935.

Q. And did you want to be transferred back to night work? A. No, I wanted my new job on the day work to be reclassified, or, rather, that I be paid what the job has been classified at before.



1330

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Q. Yes, and did you succeed at all in getting a rating?

A. No, I did not.

Q. And when did you finally learn that your application for reclassification was denied? A. About the middle of November, 1935.

Q. Was it after the conference with Mr. Dean that you have already testified about 1935? A. Either several days before or several days after this conference I

S. M. 415

1331

received the final, the last letter which I did on the subject.

Q. I show you a letter signed by the assistant to the employment manager dated November 13, 1935, and ask you if this letter refers to the application about which you have just been testifying?

(Document passed to the witness.)

A. No, this was concerned with another vacancy, notice of which appeared on the bulletin board, for which I made application, nothing was ever done on this.

1332

Q. Well, then, if you will return that to me I will show you a letter dated November 4th, dated and signed by Mr. Smith, secretary, Salary and Job Classification Committee, and ask you if that is the letter concerning the rating request that you have been testifying about?

(Document passed to the witness.)

A. That is correct.

Q. And is that date, is that last letter that you received regarding the request for a reclassification, is that the last letter you received? A. I believe it must be. I had believed that the date was later in the month, but that seems to be the last one which I received.

Q. The date, then, would be November 4, 1935, is that right? A. That is right.

S. M. 416

Q. Now, the letter which I showed you immediately before, dated November 13th and signed by the assistant to the employment manager, refers to what situation? A. To another job which the notice for the vacancy of which was posted on the bulletin board and for which I applied.

Q. What job was that? A. Oh, I forget the classification of it, it was the job which carried a larger wage than the one I was receiving at that time, for that reason I applied for it.

1334

Q. And is this the only letter that you received in response to your application for that position, the one dated November 13, 1935? A. Yes, I believe it is.

Mr. Moscovitz: May I have that marked for identification?

(Document referred to was marked Board's Exhibit No. 9\* for identification.)

Mr. Moscovitz: You will notice the last paragraph of this letter, which is Board Exhibit 9 for identification, states that it seems probable that you will qualify for the position, that you will be notified to appear for an interview on or before November 15, 1935; was your appearance requested?

1335

A. No, it was not, I don't recall receiving any further word whatsoever in reference to that particular job.

Q. Did you receive any communication after that at

S. M. 417

all about any question from management? A. No, I don't recall any communication or word of any sort.

\* Letter was identified as Exhibit No. 9, although another document had been marked as Exhibit No. 9. This letter was not included in the Transcript of Record filed.

1336

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Q. You took no further questions up with them? A. I did not.

Q. By whom were you discharged in November, 1935? A. Mr. Paine, who was the assistant to the personnel director.

Q. Well, after your relationship with the company was severed on that date, did you continue your activity in the Independent Brotherhood of Utility Employees? A. I did.

1337 Q. And did you continue your activities until such time that you reorganized and became a member of the I.B.E.W.? A. I did.

Q. Did you after becoming a member of the I.B.E.W. and an officer of the local, take any steps to change to another labor organization? A. Let me get this straight, did I after becoming a member of the I.B.E.W., take any steps to change?

Q. Yes. A. At the time, well, that is rather a difficult question to answer in a few words, so I will have to explain some of the background to the situation which caused the change into the C.I.O.

1338

Judge Ransom: I object to this as wholly in-

S. M. 418

competent and not in any way binding on the respondents or within any issue here. At the time, it was all subsequent to his discharge, long after.

Trial Examiner Gates: What do you say to that, Mr. Moscovitz?

Mr. Moscovitz: Well, the activity about which this gentleman is now testifying, or about to testify, does take place after his discharge from the company, it is true, but it relates to another allegation in the complaint which is important and I think, too, that it is necessary that the Board have

before it a complete picture of the labor situation as it existed in this system after this gentleman's discharge.

Judge Ransom: But it is not claimed here and could not be that he was discharged because he was a member of the C.I.O., he wasn't a member, it could not be claimed that he was discharged because he belonged to the I.B.E.W., he wasn't a member. There is no complaint here involving the Independent Brotherhood to which he at one time belonged, there is no complaint here as to the employees representation system or the choice of representatives, in which he for a period participated.

1340

Now, this is wholly subsequent to his discharge and I submit that under no phase of this complaint, even the Section 8-2 allegation, can it be supported

S. M. 419

by any explanation of his reasons, or the reasons of others, for changing from the organization, the I.B.E.W., which this complaint would attack, if your Honor allows the amendment asked for this morning, into the C.I.O., to which this man never belonged during the period of his employment.

1341

Mr. Moscovitz: But there is an allegation in this complaint, Mr. Examiner, concerning 8-1, and there is a question before you concerning 8-2, and this witness is qualified to testify or to give testimony on those points.

It is that testimony which I am about to elicit from him.

Trial Examiner Gates: You may proceed.

Judge Ransom: Exception.

1342

*Martin A. Wersing—For N.L.R.B.—Direct*

Q. (By Mr. Moscovitz) Let me put the question to you this way, Mr. Wersing. A. All right.

Q. After you were discharged in November, 1935, did you continue being active in the utility employees organization until an affiliation with the I.B.E.W., is that not right? A. That is correct.

Q. After you became affiliated with the I.B.E.W., were you continued in that organization for one year in an official capacity, is that right? A. Approximately one year, yes, sir.

1343

Q. Now, during the period of time that you were

S. M. 420

active in an official capacity for the I.B.E.W., you were representing individuals who were employees of the Consolidated Edison System, is that right? A. That's correct.

Q. And they were employees working in the company in which you had previously been employed, is that right? A. In part, yes.

Q. As well as other companies, in the system? A. Correct.

1344

Q. During that period of time, were you engaged in an organizational campaign for the I.B.E.W.? A. We were.

Q. And had you taken questions up with your International representatives regarding this campaign? A. We had.

Q. Can you tell me whether or not during that period of time any question was raised by your membership regarding a change to a different labor organization?

Judge Ransom: I object to that as wholly immaterial and not within any issue here, the question of what was thought about or discussed or



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1345

decided by the members of any particular local of the I.B.E.W. is not within any issue here.

**Trial Examiner Gates:** You may answer.

**Judge Ransom:** Exception.

S. M. 421

**The Witness:** The C.I.O. progress in other industries was well known to our own membership and the matter was discussed with me by a number of our members, and while it was never brought up on the floor at the regular membership meeting, it was brought up before various committees such as the executive committee, the organizational committee, and there was a movement on in the Edison Company, itself, amongst men who were not members of our organization, to get a charter from the C.I.O. for the Edison Company.

1346

It was these things, among others, that forced us to recognize that there was considerable C.I.O. sentiment in the utility company and the Edison System.

**Q.** Well, during the period of time that this question of your recognizing the existence of the C.I.O. came into existence, were you engaged in any negotiations with any of the plants of the system for recognition? **A.** We were, our organizational plan at that time, where we had a majority of men organized in a particular plant, or division, or department, to make a request of the management that a union grievance committee be recognized, by it, to speak on behalf of the employees in each particular department. Such recognition had been accorded to our grievance committee from the Hudson Avenue generating station. Some results had come from this recognition, but there was many of the demands which

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*Martin A. Wersing—For N.L.R.B.—Direct*

S. M. 422

1349

had been presented which had not received favorable consideration. In other words, that the men would have confidence in their organization and in order that the other departments could promptly continue their organizational efforts and strengthen them themselves to the point where they would have sufficient confidence to go before the management with their requests for union recognition, or grievance committee recognition, it was felt that we had to have some indication of the backing of the C.I.O., which was the only force at that time in the labor movement that was regarded by the Edison employees as being the one capable of putting up a sufficiently large and powerful fight that even the Consolidated Company would have to respect it.

Judge Ransom: I move to strike out the entire argument of the witness in behalf of the employees as not within any issue here, highly incompetent, highly self-serving and hardly warranted by his salary.

Trial Examiner Gates: It may stand.

1350

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Were you then attempting to secure similar organization for other organized groups throughout the rest of the system? A. We were.

Q. Do you recall what other groups? A. Meter readers in the Brooklyn Edison Company, the inspectors

S. M. 423

of the Brooklyn Edison Company, the overhead bureau in Queens, which was about ready to go up and speak to the management, the sub-stations department in Manhattan, that is the D.C. sub-stations, were approaching the point where they, too, would seek this recognition.

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1351

The stage of organization was, of course, different in different departments.

They were all heading towards that objective, some were closer to it than others.

Q. Did you call the C.I.O. in to give you aid in this matter, or did the C.I.O. come in of its own accord?

Judge Ransom: I object to that as wholly immaterial, it is long after the witness's termination of employment, and not within any issue here, not binding on the respondents.

Trial Examiner Gates: Overruled.

1352

Judge Ransom: Exception.

The Witness: We called the C.I.O. in, we were acquainted with various officials of the United Electrical & Radio Workers, a C.I.O. affiliate at that time, and when we needed an expression from them as to how they felt about the utility workers and their willingness to cooperate and so on, we felt free to call upon them and they responded.

Q. I see, when was that, do you recall? A. That was March 11, 1937, at which time they sent one of their rep-

S. M. 424

1353

representatives to appear before a Hudson Avenue meeting we had called.

Q. Yes, and who was the representative that appeared? A. Julius Emspack.

Q. Who is he? A. He is the secretary-treasurer of the United Electrical & Radio Workers of America.

Q. And was the meeting that Mr. Emspack attended a meeting only of members of the I.E.B.W.? A. That's correct.

Q. And what was the purpose of his coming to that meeting at that time? A. To express to the membership

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there assembled the same opinions, thoughts, rather, that he had expressed to myself and other officials of the union to the effect that the C.I.O. was quite willing to cooperate with us; further, that they had no intention of seeking to dis-affiliate us from the American Federation of Labor, what they were interested in was organization in the larger industries, and if it were being done in the American Federation of Labor satisfactorily they had no wish other than to help that organization.

1355

S. M. 425

Q. (By Mr. Moscovitz) And was that the topic on which he spoke at that meeting? A. Yes.

Q. When was the date of the meeting? A. That was March 11 of 1937.

Q. Yes.

Q. Was that the first meeting at which a representative of the U.E.R.W. appeared? A. Yes.

Q. Was there any further, were there any further speeches at that meeting by other individuals? A. Yes, Mr. Stonkus officiated at the meeting and spoke.

Q. But there were no other C.I.O. representatives? A. No.

1356

Q. Were there any representatives at that meeting from the I.B.E.W. outside of your own membership? A. No one other than our membership.

Q. Did you have another meeting after that where C.I.O. representatives spoke again?

Judge Ransom: Objected to as wholly immaterial, too remote from any issue in the complaint, not within any issues here of March, 1937 and afterwards. This witness ceased to be an employee of the company in November of 1935.

Mr. Moscovitz: I withdraw that question.

*Martin A. Wersing—For N.L.R.B.—Direct*

1357

Q. (By Mr. Moscovitz) Was there any change in the

S. M. 426

status of your organization after that meeting?

Mr. Ransom: Objected to as immaterial.

A. Yes, there was.

Trial Examiner Gates: He may answer.

Judge Ransom: Exception.

A. Yes, there was on March 19 of that year, another meeting was called at which the question of just what our attitude on the C.I.O. was to be in the future. This was called as a general membership meeting, whereas the previous meeting on March 11 was a meeting particularly of our men in Hudson Avenue station.

1358

Q. Were C.I.O. representatives in attendance at that meeting? A. They were.

Q. Who was there? A. Both Mr. Emsbach and James P. Carry, general president of the U.E.R.D.

Q. Did they speak? A. They did.

Q. Was there a change after that meeting in the status of your labor organization? A. There was. Owing to circumstances which developed the day of the meeting which were that our charter was listed by the I.B.E.W., our seal, books, certain records were taken away by representatives from the International office of the I.B.E.W.

1359

S. M. 427

it was necessary that we have both Mr. Emsbach and Mr. Carry there and prepare to give us a charter if our membership so voted. They so voted and the charter was installed that evening.

Judge Ransom: Move to strike out the answer as not within any issue under the complaint as it



1360

*Martin A. Wersing—For N.L.R.B.—Direct*

status; that if the testimony is related to the amendment asked for this morning, that the I.B.E.W. is a necessary and indispensable party to the proceeding.

Trial Examiner Gates: Objection overruled.

Judge Ransom: Exception.

1361

Q. (By Mr. Moscovitz) These circumstances, to which you refer, did they all take place on the same day of this meeting? A. Yes. International office representatives called upon us at ten or eleven o'clock in the morning and proceeded with its business of listing our charter and books and so forth and at the same time serve notice upon the business manager and myself that we were suspended for speaking and considering C.I.O., having any relationship with them.

Q. Who were these representatives? A. Assistant to the president, Bieretz, and International vice-president Kloter. And further than that the man whom International president Tracy had appointed to act as temporary successor of our business manager, Mr. Marcianti, I think.

S. M. 428

1362

Q. Where did they call on you? A. At our headquarters, 3 Albee Square, Brooklyn.

Q. Was it then that they took your charter, books, seal, and other records? A. Yes.

Q. Did you receive any communication or communications that day from the headquarters of the I.B.E.W., aside from the visit from this committee? A. Yes, assistant to the president, Bieretz, presented me with a document, called set of charges, in which I was accused of plotting of the well-being of the International Brotherhood of Electrical Workers and so forth, by reason of having had relations or connections with the C.I.O. A similar—a letter embodying something of the same thing

had been sent to the entire membership and in addition to what I have already stated, was contained in the letter to me, the membership were acquainted with the fact that the meeting that night was an illegal meeting and they were not to participate in it.

Q. Was the meeting called off? A. No, went through as scheduled.

Q. And was there a vote taken on the question of whether or not there would be a change in affiliations?

A. There was.

Q. Was the vote for a change in affiliations?

1364

Judge Ransom: Objected to as immaterial and

S. M. 429

incompetent and not within any issue here. It simply emphasizes what I tried to point out this morning, that this case is an issue against the International Brotherhood, which is not a party to these proceedings.

Trial Examiner Gates: He may answer.

Judge Ransom: Exception.

A. A vote was taken on whether or not we should affiliate with the C.I.O. and with the exception of two votes, everybody else in the hall voted in favor of the motion.

1365

Q. (By Mr. Moscovitz) Was the charter then presented? A. The charter was then presented.

Q. By whom? A. Mr. Carry.

Q. And was it at that point then that the new local of the C.I.O. came into existence? A. That's right.

Q. What was the local number? A. Its affiliation's name was Utility Workers Union Local 1212.

Q. And has the same local continued since that date?

A. It has.

1366

*Martin A. Wersing—For N.L.R.B.—Direct*

Q. While you were a member of the I.B.E.W. and before becoming affiliated with the C.I.O. did you take any questions up in your official capacity with the company? A. Yes, during the course of our connection with the I.B.E.W. there were on several occasions men discharged or laid off.

S. M. 430

1367

Q. Now, will you give us dates? A. In June, 1936, William J. Kennedy; John Emler; William Bakke, were laid off by the New York and Queens Electric Light & Power Company. This matter was taken up through our International office with the President of the Consolidated Edison Company, Frank Smith. The men are still unemployed. Nothing resulted from that.

1368

Then our next contact with the management officially was in November, 1936, when John J. White was discharged by the Brooklyn Edison Company. This man was discharged, not laid off. I think I was the only one who signed it, we addressed a letter to Mr. Floyd L. Carlisle, acquainting him with the facts of the situation and calling upon him to immediately order the reinstatement of this discharged employee. That did not happen for a period of ten days. We carried on one activity after another until the reinstatement was secured through Mr. Low, the Vice President of the Brooklyn Edison Company.

Q. And who handled those negotiations on behalf of the discharged employees? A. A committee from Hudson Avenue consisting of fellow employees of this Mr. White, called upon the management on several occasions and took up the matter. It was at that time that Brooklyn Edison Company first recognized as a union committee one of our committees.

S. M. 431

Judge Ransom: I move to strike out the witness' statement as volunteered and calling for a conclusion, not evidence of recognition or non-recognition.

Trial Examiner Gates: It may stand. I will ask that the witness explain the facts as to that recognition.

The Witness: Well, I say, Mr. Examiner, it was the first time that a committee from our union, which was then Local D-752, had been received by the management as a union committee. They called upon the management and explained that they had been elected by the membership to represent or to seek the reemployment of John J. White who had been discharged and they were accepted as the union committee on that occasion and on the following occasion when they called upon another member of management on the same date.

1370

Judge Ransom: Could you fix those dates a little more definitely when you claim the I.B.E.W. was recognized.

1371

The Witness: I did not say, Mr. Ransom, that the I.B.E.W. was recognized. I did not say that the union was recognized. I merely said that the union grievance committee, the union committee of men working in the company, was recognized, was accepted by the management as such.

Trial Examiner Gates: Have you fixed the date?

The Witness: The date was in the early part of November. No, wait a minute—Mr. White, I believe, was discharged on November 10th. Nego-

1372

*Martin A. Wersing—For N.L.R.B.—Direct*

S. M. 432

tiations continued, or rather, he was out of work for a period of about ten days or possibly two weeks so that these meetings with the management between the committee of our members occurred several days apart, between the 10th and the 20th of the month.

1373

Q. (By Mr. Moscovitz). Were there any other questions that you took up from time to time with the management as an officer of the I.B.E.W. local? A. I directed a letter, I think, to Mr. Carlyle, asking him to recognize that the cost of living was going up and so forth and to meet the wages that any industries were paying by giving one to the employees of the Edison System. Other than that, I do not recall anything else on that line.

Q. Do you know whether or not during this period of time before the I.B.E.W. became affiliated with—before your organization became affiliated with the C.I.O., the company was engaged in any activity in opposition to the I.B.E.W.?

1374

Judge Ransom: Objected to as incompetent, irrelevant and immaterial, calling for a conclusion.

Trial Examiner Gates: He may answer.

A. Again I am at a loss for dates. However, it was reported to our executive board, and some time in 1936, after we became a part of the I.B.E.W., various members of our organization were called before their immediate

S. M. 433

supervisors and the department heads and told in no uncertain terms that the company's policy on unionism had not changed. They were just as much opposed to it, and that these men had better look out for themselves, as they had ever been in the past.



*Martin A. Wersing—For N.L.R.B.—Direct*

1375

Q. (By Mr. Moscovitz) Who were these men?

Judge Ransom: Move to strike out the answer as wholly vague, indefinite and hearsay and not within any issue here.

I point out that the courts have specifically held, in respect to this Board, that that kind of statement is not testimony.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

A. Lewis Kricker.

1376

Q. (By Mr. Moscovitz) What company was he employed by? A. He was with the New York Edison Company, I believe.

Q. Yes. A. Then Harry Hertz.

Q. What company was he with? A. He was with the Brooklyn Edison Company.

Q. Yes. A. Saul Mirsky, with the Brooklyn Edison Company, and Arthur Tumin, with the Brooklyn Edison Company.

Q. Do you recall when that was in relation to the time of the affiliation with the C.I.O.? A. It was considerably

S. M. 434

1377

before that period. It was in the fall of 1936, I would judge, around September, August, September or October that these things happened.

Q. Do you know whether or not during this same period of time there were publications issued by the employees representation association? A. Yes, in July, 1936, I believe it was the company union in New York, over the signature of a Mr. Youngman issued the leaflet attacking the I.B.E.W. and practically everyone and everybody that was in it as being agitators and radicals or one, and then contradictorally racketeers for another thing.

1378

*Martin A. Wersing—For N.L.R.B.—Direct*

All we were interested in was \$500,000 dues each year from the employees of the Edison System.

Mr. Ransom: I move to strike out the answer as incompetent, and not a competent method of proving any fact, in no way binding on the respondents, not within the issue, here.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

1379

Q. (By Mr. Moscovitz) What is the name of that publication? A. That was merely a leaflet that was issued by the company union, it was a blue leaflet.

Q. Were there leaflets similar to that distributed from time to time during that period? A. No, as I recall that was the first leaflet issued of that nature in the New York

S. M. 435

and Queens Company, they have a monthly or a semi-monthly news bulletin, that is in the New York and Queens Company, which they pass out which contained nothing of the sort of material that was found in this particular leaflet.

1380

Q. Who is Mr. Youngman? A. He was at that time chairman of the plan in the New York Edison Company.

Q. You say at that time, you mean July, 1936? A. Yes, sir.

Q. And do you know what his job was in addition to that with the company? A. No, other than that he is supposed to be on the monthly payroll, he works at 15th Street somewhere, in one of the offices, a technical job.

Q. He is a lineman? A. No, he is not an outside man at all.

Q. Office man? A. I believe so, I think in the technical side.

*Martin A. Wersing—For N.L.R.B.—Direct*

1381

Q. Have you ever come in contact with Mr. Youngman yourself? A. No.

Judge Ransom: Well, I move to strike out the answer in respect to the pamphlet referred to on the ground that the pamphlet would be the best evidence and is not produced and that the witness'

S. M. 436

characterization or argument about it is wholly incompetent and not probative.

Trial Examiner Gates: I think if the testimony stands the pamphlet should be offered. 1382

Mr. Moscovitz: The pamphlet will be offered, Mr. Examiner, it is just a question of my checking through my files here. I have so many papers, and I will produce it before the day is finished for offer on this same paper.

Trial Examiner Gates: Do you wish to withdraw the motion?

Judge Ransom: Well, I will hold it in abeyance, I assume it will be produced.

Trial Examiner Gates: Very well.

Q. (By Mr. Moscovitz) When did you first go to work for the New York and Queens Electric Light Company, Mr. Wersing? A. On the 8th day of October, October 8th, 1929. 1383

Q. In what position? A. As second-grade clerk, cash poster at night.

Q. What were you making at that time? A. \$22.00 a week.

Q. How long did you work in that position? A. Oh, for a period of four or five months and then I was put on what they call cut in and cut out.

Q. Was that night work? A. All night work, yes, sir.

1384

*Martin A. Wersing—For N.L.R.B.—Direct*

Q. When were you put on cut in and cut out work?

S. M. 437

Were you increased in pay at that time? A. I was not.

Q. When was your next raise? A. A periodic increase came through six or eight months, about eight months after I started, some time in, I guess, June, 1930, a \$2.00 increase came through, which was not because of the job classification, it was the usual thing, six months after you started, you got a \$2.00 raise.

1385

Q. At that time were you doing the same kind of work? A. At that time I was doing this cut in and cut out work.

Q. What is cut in and cut out work? A. It is work in the book closing and opening, that is closing and opening the accounts of the consumers, transferring them and so on, making up their final bill and their initial bill.

Q. At that time you were not a member of any labor organization? A. No, I was not.

Q. Were you transferred to day work at any time after 1930? A. 1933, I believe it was, my chief—

1386

Q. Smith, wasn't it? A. Yes, Smith, that has been mentioned earlier, he requested that I take a transfer to day work. My immediate supervisor did not like the idea. He thought I would eventually get a supervisory job on the night force. However, it was so long coming, that I took the day job.

Q. Did the day job give you greater responsibility?

S. M. 438

A. Yes, in a measure it did.

Q. What was the work? A. The work was what they call expending work noting the date and the reading of the consumer's meters, extending, and so on.

*Martin A. Wersing—For N.L.R.B.—Direct*

1387

Q. How many persons were doing the same kind of work? A. Oh, I should suggest approximately 50.

Q. 50? A. Yes.

Q. All inside work? A. All inside work.

Q. Was there a night force doing the same kind of work? A. No, there was not.

Q. Only a day force? A. That's right.

Q. That was still for the New York and Queens Electric Light? A. That's correct.

Q. Your entire employment was with that company, is that right? A. Correct.

1388

Q. Was there an increase in pay at that time? A. No, there was not.

Q. Did you continue throughout then in day work? A. No, I stayed for a period, I guess, about six or eight months and I found the work very distasteful and found

S. M. 439

I was not getting along too well with it, was not getting anywhere generally, so I decided to take a transfer back to the night work and see if I could get out of the company entirely, leave my days free to look for another job.

1389

Q. And when you say that you found the day work distasteful, do you mean, were you having any difficulty with the work or with any of the supervisory employees or was it just work you didn't like? A. It was work I didn't like and because I didn't like it, I didn't get along so well. It was very monotonous a job, all you did all day was jot a few things down, flip a page, jot a few more things down and flip another page, which sort of gets the best of you after a while.

Q. Now, while you were doing that work during the day time, before being transferred again to night work,



1390

*Martin A. Wersing—For N.L.R.B.—Direct*

time, approximately—or possibly shortly before I received a decrease in pay, a general wage cut of \$2.00 came through, putting me right back where I started.

Q. Was that for everyone? A. That's right.

Q. Throughout the system? A. Yes.

Q. Throughout the system it was a \$2.00 cut? A. It was a \$2.00 cut and it was an eight and two-thirds cut

S. M. 440

which in my case amounted to \$2.00.

1391

Q. And do you recall when that was? A. I am hazy on the exact date of that, I believe it was—

Q. Was that 1933? A. I don't know whether it was '32 or '33.

Q. And when you went back to night work, did you go back at your decreased rate? A. Yes, I believe so; shortly, it was not very long after the cut came through that they restored half of it.

Q. Half the cut? A. Yes, amounting to \$1.00 in my case, making it \$23.00, something like that.

Q. Do you recall what time that was? A. That was probably '33, the beginning of '34.

1392

Q. Did you receive any increases from that time on? A. No, I never received an increase from then on.

Q. So your salary at that time until the time of your discharge was \$21.00 a week? A. \$23.00 a week.

Q. \$23.00 a week? A. Yes.

Q. All right, did you request the transfer back to night work yourself? A. Yes, I did.

Q. Of whom did you make this request? A. Mr. Pro-

S. M. 441

cido, I believe.

Q. Who is he? A. He was the assistant chief of the Consumers' accounting department.

Q. Were you transferred back to night work soon after your request? A. Yes, very soon after.

Q. And did you go back doing the same kind of work that you had been doing before your transfer to day work? A. No, I went back and they put me on cash posting and would not give me my previous job, cut in and cut out man. However, I did not ask for it in the beginning and after a couple of weeks or a month went back when I did ask for it why they would not give it to me.

Q. At that time you were transferred back to night work, you still were not a member of any labor organization, is that right? A. No, I was not.

1394

Q. How long after being transferred back to night work did you become a member of any other labor organization? A. Oh, it must have been a good many months. I became a member of the Brotherhood of Utility Employees in February of '34 and I was on night work before the first of the year.

Q. Did you look elsewhere during that period of time

S. M. 442

for employment? A. Yes, immediately after I went back on night work, prohibition was just ended, and I had a number of leads on jobs with various distilling companies out of the city and there were several of the brewing companies in the city. They, however, did not work out so well so I did not leave New York and Queens as I expected.

1395

Q. And did you then give up your idea of making a change in employment? A. Well, not immediately, I continued to look for employment until I became so thoroughly wrapped up in the union that there was nothing else to think about, or rather, I was in it, it did not leave me much time for looking for other jobs.

1396

*Martin A. Wersing—For N.L.R.B.—Direct*

Q. What did you do, spend your nights working and your days engaged in your union work? A. That's right.

Q. Did that start in 1934? A. 1934 that's right.

Q. And you testified already that it was then in 1934 that you organized the local of the Utility Employees organization? A. That's right.

Q. All right, now, up to this point, had any supervisory employees or representative of the company discussed union with you or had any discussion with you concerning your affiliation? A. No, no discussion.

1397

S. M. 443

Q. Did you after becoming a member of the Utility Employees organization take any steps to become transferred back to day work again? A. Yes, I don't know, sometime in about 1934 they started this system of posting notices of vacancies on the bulletin board so when one came along that looked half way decent, one that I could handle, I made application for it.

Q. Do you recall when after you were transferred back to night work that you made application for transfer again back to day work? A. Not until the fall of 1934.

1398

Q. Did you make any attempt to get back to day work at any time during 1935? A. Yes, that was, it was not very early in 1935 that I was passed up on this one transfer but I succeeded in getting the one that followed and naturally I was transferred.

Judge Ransom: It seems to me that we have been over this twice.

Mr. Moscovitz: Well, that is the transfer about which you have already testified. Is that correct?

The Witness: That's right.

Q. (By Mr. Moscovitz) The one that was taken up by Mr. Grulig and yourself? A. That's right.

Q. Now, in addition to the request for a transfer,

S. M. 444

which was taken up by yourself and Mr. Grulich, did you at any time after that make application for another transfer through Mr. Monica? A. Yes, I made—after I was informed by Mr. Schneider of the reason why I did not receive consideration for this one transfer, there appeared on the bulletin board several days after that a notice of another job vacancy for which I also applied. I received my notice this time, however, that I would get an appointment and I did. I saw a Charles Monica who is, I don't know, one of the officials in the Work Order Division of the Auditors Department. He had already interviewed several people and there were two others who were to follow me. When I saw him, Mr. Monica talked with me for a brief space of time and asked me my education, experience and so forth and said I seemed to have what was necessary and all the qualification the job seemed to possess.

1400

With that, he went in to see Mr. Hauzenbaur, who is chief of the auditors department and spent about ten minutes away from his desk. When he returned, he seemed even more certain that the job would be mine.

1401

This I noted because it seemed to me unusual that there should be any applicant for a job told that he would get it before all the applicants had been interviewed and I knew that there were still two more to be interviewed.

Subsequent events showed that Mr. Monica was cor-

S. M. 445

rect and I did get the job and I transferred, and I was transferred early in May, 1935.

1402

*Martin J. Wersing—For N.L.R.B.—Direct*

Q. To what job? A. To a job of second grade clerk in the stores division of the auditor department.

Q. And is that the job about which you have already testified, for which you attempted to secure reclassification? A. That is correct.

Q. At the time you were transferred to that job, you were receiving \$23.00 is that right? A. Yes, that's right.

Q. And the job as previously held by first-grade clerk was paying what? A. \$28.75 I believe the man that broke me in was getting.

1403

Q. Now, were you, all during this period of time, when the transfers were taking place, continuing your activity for membership in your labor organization? A. I was.

Q. During this same period of time can you tell us whether or not there were any general layoffs or layoffs of one, two or three men in your company? A. In August of 1935 there occurred the first layoff that I had the misfortune to witness amongst the office people. I believe August 20th was the exact date, 25 or more men and women from the inventory department were laid off. One

S. M. 44f

1404

of the men in that was the secretary of our local.

Q. Had you received notice of the fact that there was going to be such layoff? A. No, sir, but we felt such a thing was in the wind.

Judge Ransom: I move to strike out the statement. If that is to become evidence, there is certainly no limit. We have had most of this witness' stuff out of the air, but now that is in the wind, gone with the wind, and I suggest that the limit ought to be drawn.

Trial Examiner Gates: It may be stricken.

Q. (By Mr. Moscovitz) Did you receive any notice that there was to be a layoff? A. No. The management



never wrote to us in advance that they were going to do anything like this. We used our own judgment.

Judge Ransom: I move to strike out all after the word "No".

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Were there rumors in the plant that there was to be a layoff?

Judge Ransom: Objected to as immaterial and incompetent, not a method of proof.

1406

Trial Examiner Gates: He may answer.

A. Yes, there were many rumors to the effect that any-

S. M. 447

wheres from 250 in New York and Queens were to be laid off to 2500 in the entire system.

Q. Had those rumors caused concern to your labor organization? A. They did.

Q. Did you do anything about it? A. Yes, we wrote to the Governor of the State of New York requesting that he interview and prevent what we believed to be the forthcoming layoffs.

1407

Q. When was that, do you recall? A. That was in August, 1935.

Q. Did you sign— A. I did, yes.

Q. Did you sign, in your official capacity, as representative of the labor organization? A. I did.

Q. Did you communicate with anyone else? A. Yes. I believe we also communicated, in fact, I am quite sure we communicated with Mr. Maltbie, chairman of the Public Service Commission, and with Mayor LaGuardia.

Judge Ransom: I move to strike out all the testimony. The Utilities are under obligations to operate economically and efficiently. There is no

1408

*Martin A. Wersing—For N.L.R.B.—Direct*

charge here, no claim made that with respect to any of the matters embraced in this line of testimony—

Trial Examiner Gates: What do you say to that, Mr. Moscovitz?

S. M. 448

1409

Mr. Moscovitz: Well, I think that if there is any question about the economic operation of the utilities, that is something that Judge Ransom can take up at the proper time. I think this witness is entitled to give testimony before his discharge, the allegation of the complaint being that he was discharged because of union activity and membership, and this is one of the elements in support of that allegation.

(Question read.)

Q. (By Mr. Moscovitz) Were you the person who communicated with those gentlemen? A. Yes.

1410

Q. Were you concerned only about the one impending layoff or about other matters as well? A. We were concerned mostly with the layoff. There were indications that the company was about to commence, or about to try to merge its various affiliated companies into one. We felt that that might be used as a means of laying off a considerable number of employees.

Further than that, shortly before that, in a series of paid advertisements in the newspapers, there appeared a quotation of 48,000 as being the number of employees in the Edison system, in the first of these advertisements. Mr. Smith was quoted as stating there was more than

S. M. 449

48,000 employees. Successively in the different advertisements in the newspapers, this dropped down to where

it numbered about 45,500. Then I believe it dropped down to 44,000. The New York "Sun" carried a quotation by one of the officials during the break-down or some occasions or other, where there were 43,000 employees, so all of these things caused us to be very apprehensive as to the fate of many thousands of employees.

Judge Ransom: Move to strike out his whole answer as not within any issue in this complaint, and wholly incompetent, and not probative as a method of showing any facts in this proceeding.

Trial Examiner Gates: Denied.

1412

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Were there any layoffs after you sent those communications to the Mayor and to the Commissioner? A. Yes, these 25 people were laid off.

Q. 1935? A. Yes, August, 1935. I have no expert knowledge as to how many were laid off in other parts of the country. It was reported to us that there were.

Q. Did you continue your fight in support of your desire to protect men from further layoffs? A. We did.

Q. What was your desire in that regard? A. Our

S. M. 450

1413

desire was that there was to be no further layoffs, or no layoffs whatsoever, and our means of achieving that desire was to build the independent union strongly enough so that it could accomplish it.

Q. Were you also interested in having an organization which could take such questions up with management? A. Yes.

Q. Did you publish any literature at that time on the question of layoffs? A. Yes, we did, in Queens, we had a paper known as the "Live Wire", which came

1414

*Martin A. Wersing—For N.L.R.B.—Direct*

out approximately once each month and in it were leading articles of this matter of layoffs.

Q. Were you identified with that publication? A. Yes, I believe I had a signed article in two or more editions of it.

Q. And do you recall when it was that your signed articles appeared? A. I am quite sure there was one in the October issue and possibly one in the November issue.

1415 Q. And were those issues both before your termination of employment with the company? A. Yes, they immediately preceded my termination.

Q. Did you receive any notice before November 29, 1935, that—when your employment was terminated with the company—you were to be discharged or laid off? A.

S. M. 451

I did not.

Q. Was there any indication in any way that you were to be discharged or laid off? A. No.

1416 Q. Had you had any discussions before November 29, 1935 with any representative of management regarding your status with the company? A. That is as to the permanency of jobs, no, I can't say that I had. I assumed, as did everybody else that it was a permanent job.

Q. Had you, during the period of time that you worked for the company ever been discharged before? A. No.

Q. Or laid off? A. No.

Q. Didn't you, during the period of time that you were employed by the company,—had there been any other mass layoffs that you knew of in your company outside of the 25, about which you have already testified? A. Why, there was a layoff in the Subway Bureau back in

*Martin A. Wersing—For N.L.R.B.—Direct*

1417

©1934, of 50 or 100 people, which the union protested about and that is the only one that I knew of prior to this one I have previously mentioned.

Q. At the time of your discharge in November 29,

S. M. 452

1935, exactly what kind of work were you doing? A. I was in charge of inventory work on transformers and devices.

Q. Was that your sole job? A. That's all.

Q. Was there any other person in the office doing the same kind of work? A. Not the identical work. 1418

Q. Were there any persons in the office working under you in that job? A. No.

Q. How many persons were there employed in the office at that time? A. Oh, I should judge about thirty.

Q. And were you part of a particular department? A. Yes, the auditors department.

Q. How many persons were there employed in that department? A. I couldn't say off hand, several hundred though.

Q. Where were you located? A. At 2819 Bridge Plaza, North Long Island City.

Q. Had you ever been brought before a representative of management or before a personnel representative and criticized for any work that you had done during the time you were employed by the company? A. On one occasion, while doing this extending work, Mr. Procede 1419

S. M. 453

called me over and spoke to me about, I don't recall exactly whether it was not doing enough work and what I was doing, was not of the best, or whether it was merely a criticism on type of work.



1420

*Martin A. Wersing—For N.L.R.B.—Direct*

Q. Is that the only time? A. That is the only time I have any recollection of as being important. Of course, in all these office jobs, you slip up once in a while and are, of course, told about it, and that is about all it amounts to.

Q. When was that in relation to the date of your discharge? I mean the Procedo matter? A. That was in 1933.

Q. A couple of years before? A. Yes, the fall of 1933, in 1933.

1421

Q. Have you ever been commended by anyone of your supervisors for work that you have done before your discharge in 1929? A. Well, my immediate supervisor on the night force, when I first went there, a man by the name of Michael Altman indicated his commendation by putting me unofficially in charge of this cut ~~in~~ and cut out work, so that I had to break in all the new fellows, run in in the day time and get extra instructions as to change in work, when the rates were changed and so forth and bring it back to the rest of the fellows, how it was to be done in the future and so forth.

Q. How long were you doing that? A. Oh, for a

1422

S. M. 454

period of a year and a half to two years.

Q. Up to what date? A. Up to 1933 when I went into the day force, and then the mere fact that Mr. J. J. Smith, the head of the department called me in and requested that I take this transfer to the day job is in itself a commendation.

Judge Ransom: I move to strike out the witness' conclusion that it was in itself a commendation.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

A. Well—

Q. (By Mr. Moscovitz) Why do you say that that was in itself a commendation? A. For the reason that it is an unusual procedure. It is an indication of the head of the department's interest in you if he goes so far as to call you into his private office and suggest that you take a transfer in a manner which was a promotion. A transfer from night work to day work, on an extending job is a promotion, and if there is any question on that we merely look at the wages, the wage rates now and we will find that extending is a first-grade job whereas cash posting at night is a second-grade job, while cut in and cut-out work is a second-grade job and the usual procedure for advancement is from cash poster to cut in and cut out clerk to extender in the day time.

1424

S. M. 455

Q. Were there any other evidences of accommodation to you from supervisory employees? A. Yes, Mr. Grulich reported to me shortly before we were laid off that Mr. Locke had come to him and commended me quite highly to him.

Judge Ransom: I move to strike out the answer as highly incompetent and self-serving. Mr. Grulich is here.

1425

The idea of having one discharged employee testify that another discharged employee commended him—

Mr. Moscovitz: I withdraw the question.

Mr. Grulich is here and I can call him later.

Q. (By Mr. Moscovitz) Was there any other statement of commendation to you or indication of commendation to you or indication of commendation to you from a supervisory employee, so far as you can recall? A. No,

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not in so many words. I had many conversations with Mr. Locke and we got along splendidly.

Q. Who is Mr. Locke? A. Mr. Locke is my immediate superior. He was in charge of the stores accounts division.

Q. How many persons did he have under him? A. About thirty.

Q. Did he from time to time, up until the date of your discharge, discuss with you the work that you were doing? A. That's right.

1427

S. M. 456

Q. Did he give you any indication about what he felt about your work in the future in the system? A. He indicated he thought I was doing all right with it. I more or less had to make the job in view of certain changes they wanted made in the method carried on. He agreed with all the changes that I made.

Q. Have you from time to time introduced new changes into the manner in which this work was to be done? A. Yes.

1428

Q. Were they changes which resulted in expedition? And more efficiency? A. That's right.

Q. Had he complimented you along those lines? A. I wouldn't say that he made a particular point to compliment me, but he said he was satisfied with it.

Q. He approved of what you were doing? A. Yes.

Q. Do you recall when it was that he indicated disapproval? A. At various times during the six or eight months I was on the job.

Q. In what year? A. That was 1935, May to December, I think.

Q. November, 1935? A. November, 1935.

Mr. Moscovitz: We can stop at this point, Mr. Examiner.

S. M. 457

Trial Examiner Gates: All right, we will recess until 2:10.

(Thereupon at 1:10 P. M., a recess was taken until 2:10 P. M.)

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AFTERNOON SESSION.

Trial Examiner Gates: Proceed.

Q. (By Mr. Moscovitz) You testified this morning that you had never been laid off or discharged before November, 1935, is that right? A. That's correct.

1430

Q. Can you tell me whether or not the layoff of 25 persons to which you referred this morning affected any persons working in your department? A. No, it did not.

Q. Will you tell us what took place on the date of your discharge? A. On the morning of November 29th Mr. Grulich came over to me and said that Mr. Locke, our supervisor, had informed him that he and I were both wanted at the personnel bureau office. We went over there and spoke to the information clerk, I suppose he is called, and he said, "Sit down", and we would be called in a few minutes.

1431

In the room when we arrived, there was one other man who like ourselves did not know exactly why he had been called up there.

S. M. 458

Q. What was his name? A. His name was Mannone, I believe is the correct spelling. The first name I think was Clem.

Q. Yes. A. While we were sitting there after a few minutes, of course, I happened to look up to the door

1432

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which was the entrance through which we had to go and I saw a man pass by, that was Michael A. Wagner, who was treasurer of our local. When I saw him pass, I realized that the situation was possible a little different than I had at first suspected.

Q. Well, when you saw him go by, was he leaving the office that you were going into? A. That's correct, yes sir.

1433

Q. And when you refer to the local what local do you refer to? A. Local 103 of the Brotherhood of Utility employees of America.

Q. Well, it was shortly after that that you went in? A. It was shortly after that that I was called in.

Q. Did you go in alone or with Mr. Grulich? A. I went in alone.

Q. Were you the first one called or was Mr. Grulich the first one called? A. No, I was the first one called.

S. M. 459

1434

Q. Go ahead. A. I was told to see Mr. Payne, I did, I walked in and I was escorted to Mr. Payne's desk. Mr. Payne looked up and said, "Mr. Wersing, I have some bad news for you".

I said, "Is that so? Let's have it."

"Won't you sit down".

I did.

He told me that they were discontinuing one of their departments and in order to make room for the married men who were in this department it was necessary for them to lay off single men from other departments.

Q. Were you single at that time? A. I was. I asked him on what basis I was chosen to be one of the single men to be laid off and he said, that it was not his choice and he did not know how it had come about.



I asked him a number of other questions as to why I, of all people, should be singled out. I pointed out that I was an official of the labor organization, one of the few in the main office building, and asked him if that had any connection. He, of course, denied that the union connection meant anything in this layoff. I repeated questions along that line but elicited no information. Neither Mr. Payne didn't know or he didn't choose to tell how I had been selected as one of the ones to be laid off. I left Mr. Payne with the question, "Do you remember a leaflet which the union recently issued entitled 'Turkey or Layoff for Thanksgiving'?"

1436

S. M. 460

He said, "Yes, I remember".

I said, "Well, you haven't heard the last of this, but I want to point out in connection with that leaflet that the union made its first mistake, it knew the layoffs were coming, but it made one mistake on that leaflet and that was that it should not have been 'Turkeys or layoffs', it should have been 'Turkey and Layoffs'".

So Mr. Payne, he gave a bashful grin and he refused to discuss the matter at all, and I was ushered out.

1437

Q. Well, when had this leaflet been distributed? A. As I recall it, that same week. I believe we started to distribute it Monday of that week or possibly Friday of the week before.

Q. When you asked Mr. Payne whether or not there had been some standard applied in the layoff of your self, did he give you any definite answer outside of saying that the married men had been laid off? A. No, he did not. You mean, the single men had been laid off.

Q. Yes, the single men. Did he make any statement as to who was going to fill your job? A. No, he did not.

1438

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Q. Did he make any statement about the layoff or discharge of other persons? A. No, he did not.

S. M. 461

As I recall it, I did ask whether or not Mr. Grulich was there for the same reason that I was, and I believe he replied Yes.

Q. And did he announce that your layoff or discharge was for the purpose of retaining married men? A. That is correct.

1439

Q. Did you point out to him the fact that there were a great number of married women who were employed in your department? A. No, I do not recall that I did point out that there were a great many married women. I did point out that there were people of less seniority than myself in the department, and I believe in the division in which I was employed.

Q. Yes, and did you tell them how many persons there were in your department who had less seniority than you? A. No, for the reason I did not know exactly.

Q. Do you know, offhand, how many persons there were employed in your department who had less seniority than you had?

1440

Judge Ransom: He just said he didn't know.

A. I don't know exactly how many.

Q. (By Mr. Moscovitz) Do you know approximately how many?

Judge Ransom: I object to the witness guessing.

Trial Examiner Gates: He may state if he knows.

The Witness: I do not know approximately either. I do know that there were some and I pointed that out.

Q. Yes. Were you in a position to name persons employed in the department who had less seniority than you?

S. M. 462

A. Yes, I was.

Q. Will you name them? A. I am afraid I cannot give the names of any of them right now. My previous testimony shows, I was in this department for a rather short time. I did not go up with it. I did not see the people come in to it. I had been transferred to it. I had this information, however, from others who had been in this department for a sufficient time to know.

1442

Q. Do you know whether or not a person was put in your job after you were let go? A. I have been informed that my job was taken by another individual.

Q. Do you know the name of that individual? A. I believe his name is John Boler.

Q. Do you know whether or not John Boler is a married or a single person? A. I don't know.

Mr. Moscovitz: I wonder if Judge Ransom has with him a record which would indicate whether or not a person was put in there, in Mr. Wersing's position, after he was discharged?

Judge Ransom: That record is not here. I believe it is the fact that a man was transferred, as was stated by Mr. Wersing, a man was taken from the inventory bureau and placed in that posi-

1443

S. M. 463

tion in the work order bureau of the auditors office.

Q. (By Mr. Moscovitz) You have no information as to whether or not that person was married, is that right?

A. No, no, I have not.

Judge Ransom: Or as to his years of service.

1444

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Q. (By Mr. Moscovitz) Do you have any information as to his years of service? A. No, I have not.

Q. Do you have any information as to how many other persons were let go on the day that you were? A. To the best of my knowledge there were five. At least I know that there were five men laid off.

Q. Who were they? A. This man Mannone that I mentioned and another man that I formerly worked with while on the night force work by the name of Maloney, then two union officials in addition to myself.

1445

Q. Who are they? A. J. A. Grulich, vice president of the local, and Michael A. Wagner, treasurer of the local.

Judge Ransom: Do you mean six in all on that day?

The Witness: Five that I know of.

Q. (By Mr. Moscovitz) Including yourself? A. Yes.

Q. And these two other persons, Mannone and Ma-

S. M. 464

loney, were they members of your organization? A. They were not.

1446

Q. Do you know whether or not they were members of any organization? A. They were probably members of the company union.

Q. Do you know whether or not they were? A. Maloney I can state definitely, yes.

Q. Yes. A. Mannone, I don't know.

Q. Have you ever heard of a man by the name of Welsh? A. Yes, I have heard of him.

Q. Who is he? A. At the time I knew him, I believe he was employed in the payroll department from which he was transferred, I believe, to the inventory department.

Q. Was that a transfer into your department? A. No.

Q. Do you know whether or not he worked in your department at any time? A. He worked in my department, I believe, at one time in the work order division.

Q. Do you know whether or not he was transferred to your department after you were discharged? A. It is my understanding that he was transferred into the stores accounting division of my department after the union

S. M. 465

officials had been let out.

Q. Do you know what position he was transferred into? A. I understand to the position from which Mr. Grulich made his exit. 1448

Q. Do you know what Mr. Welsh's first name is? A. I won't swear to it, but I think it was Joseph.

Q. Do you know whether or not he was married or unmarried? A. I have been informed that he was unmarried at the time he was transferred in there.

Q. Do you know what his seniority was? A. No, I don't.

Q. Do you know whether or not there remained in the employ of the company in your department many unmarried girls? A. How many I don't know; I do know that some of them were unmarried. 1449

Q. How many girls were working in your department at the time you were let go? A. Oh, 20 or 25.

Q. Now, were they persons who were doing the kind of work that you and Mr. Grulich and the other men who were let go were doing? A. Some of them, yes.

Q. Were any of those unmarried girls let go to your knowledge? A. They were not.

Q. Do you know whether or not Mr. Payne who dis-

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charged you is a married man? A. Yes, I believe he was.



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Q. Do you know whether or not his wife was employed by the company? A. I have been so informed, that she is employed by the company in the capacity of secretary to Mr.—the vice president of the company, Mr. Dean.

Q. Have Mr. Payne or Mrs. Payne been discharged or laid off? A. Not that I ever heard.

1451

Q. After you were discharged, was your case taken up at any time with the company for the purpose of securing reinstatement? A. Yes, and immediately following my discharge we held a special meeting of the executive board of our local union which resulted in the calling of a membership meeting and a number of other meetings. The results of which were the threat to go out on strike unless reinstatement of the three union officials was affected. In the setting up of an emergency committee which called upon the management, upon Mr. Dean, to seek ways and means of amicably settling the controversy.

Q. Was the committee set up? A. It was.

Q. Who was on the committee, do you remember? A. I don't recall all of them, Mr. Kennedy was chairman of

1452

S. M. 467

the committee. On it were Ralph North, John Young, John Emler, Harry Howard, I believe, Jack Schuder, and a number of other individuals.

Q. Did the strike vote confer on the committee the right to call a strike when it deemed the strike necessary?

A. It did.

Q. And did this committee take up with the management the question of means of amicably working out your difficulty? A. It did.

Q. What did it do in that regard? A. Well, as I mentioned, it called upon Mr. Dean and sought to straighten out the matter there.

Q. When was that, do you know? A. The exact date I don't recall, early in December, however, I think.

Q. Early in December? A. Yes.

Q. 1935? A. Right. Mr. Dean took the position that the company has a right to hire and fire anybody or everybody any time for any reason or no reason whatsoever and that its actions were not subject to review by any outside agency. That led to a complaint being filed with the Labor Board from which no direct results were

S. M. 468

1454

attained and also a conference presided over by Mayor LaGuardia between representatives of the union and Mr. Dean, and an attorney for the management.

Q. When was that? A. That was in—that was also in December, 1935.

Q. December, 1935? A. Also early in December, 1935.

Q. And what was the result of those conferences? A. Entirely futile, the management had no intention of rectifying its error or of co-operating in any way to straighten out the matter.

Mr. Ransom: I move to strike out the witness' characterization of the attitude of the company, purely self-serving, argumentative, incompetent.

1455

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Were there any other conferences after the conference with the Mayor? A. Yes, at that time, after that then a Mr. Largay and a Mr. Wartenhauser from the State Department of Labor requested permission to attempt to straighten out this difficulty. They met with the same results that all the other agencies met with, which was nothing.

Q. And was this during the period of time when the strike vote was in effect? A. That is correct.

1456

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S. M. 469

1457

Q. Was anything further done after Mr. Largay and Mr. Portenell reported that they were unable to work the problem out? A. No, the course of all of this brought us right up into the holiday season. We realized, in Queens, that every indication was that the management had no desire to avoid a strike amongst the linemen, which was our main strength in Queens, and that, in order to win any such strike action, quite probably we would need the co-operation of other groups of organized employees in the system. We called upon the various locals throughout the system and they were beginning to respond. They, just as Queens Local itself, were concerned at the time, were presented with this problem, and had not given any consideration to this strike. Our whole purpose was to build an organization and we expected we would be treated with by the company on the basis of justice and equality, and would not require any serious battle which would affect the third party, the consumer.

1458

Well, as I say, all of this brought us right up to the Christmas period, and we felt that since the consumer public opinion is probably the most important element in the power situation, that we would certainly not do ourselves any good if we called a strike and seriously inconvenienced the public and particularly at the Christmas season. For that reason we postponed action and, well, as is usual when you postpone action in a case like this

S. M. 470

your strength gradually begins to dwindle and nothing further was done or was able to be done.

Q. And that was the last thing that was done for the purpose of securing reinstatement, is that it? A. That is correct.

**Q.** Do you know whether or not the company, after the strike threat was dissipated, spoke with any individual members of your organization in an effort to dissuade them from continuing their union activity? **A.** Yes, on a number of occasions after the strike vote was taken, we had it reported to the executive board, that various individuals connected with the union have been called in by the management and subjected to—

**Judge Ransom:** I object to this.

**The Witness:** —a grilling.

**Trial Examiner Gates:** Just a moment. When an objection is interposed, please do not answer.

1460

**Judge Ransom:** I object to it as completely incompetent, indefinite and vague. Neither names or dates are specified. Such a self-serving declaration by the witness could not possibly be evidence of any probative force.

**Trial Examiner Gates:** You may answer it, but give the date and the name.

**Judge Ransom:** Exception.

**S. M. 471**

**A.** All right. The following men reported to us that they had been called in by management: John Young from the Elmhurst Overhead Bureau; J. P. Murphy from the Cable Bureau.

1461

**Q.** (By Mr. Moscovitz) Any other persons? **A.** There were a number of others.

**Q.** Do you know whether or not Mr. Murphy is still with the company? **A.** No, Mr. Murphy resigned from his job several months ago and is now with the Department of Sanitation of the City of New York.

**Judge Ransom:** I move to strike out the previous answer because it is still indefinite, mere

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characterization of "called in by the management", which means nothing, identifies nobody and could not be probative.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Will you tell us what representative of the management called these gentlemen in?  
A. As I recall it Mr. Werner and Mr. Warner of the Distribution Department of the New York and Queens Company both spoke with John Young.

1463

Q. What are their positions? A. Mr. Warner at that time, I believe, was assistant to the head of the distribution department, of which the Elmhurst Overhead was a

S. M. 472

Bureau, and Mr. Werner, I believe, at that time, was the head of the Elmhurst Overhead Bureau and possibly of all of the overhead bureaus.

1464

Q. Did the report contain a statement of what it was that these gentlemen stated to Mr. Murphy and Mr. Young? A. Yes, it did. In the case of Mr. Young, he was asked why, after all of his long years of service, he should play around with a labor union; wasn't he getting along all right; wasn't he being treated fine and so forth. Mr. Young, I believe, was called in first by Mr. Werner. He managed to so successfully answer the questions put to him and the arguments advanced, that Mr. Werner decided to take him in to Mr. Warner, where the procedure was repeated. The result was that Mr. Young evidenced no desire to pull away from the union on the score of anything that had been said to him.

Q. When you were let out in November, 1935, did you receive a separation check? A. I did not, I received two weeks' salary in lieu of notice.



**Q.** Would—were you entitled to a separation check?

**A.** I believe I was. The company had posted on the bulletin board schedule of separation allowances, et cetera, in July of that year which I believe was applicable to myself and when I did not receive it some months after I was fired I instituted suit. The suit, however, lost out

S. M. 473

in, I have forgotten which court it was brought up in and lack of sufficient money to carry it forward has sort of left it lay for the time being.

1466

**Q.** Do you know whether or not there is any difference in the classification of employees who are entitled to a separation allowance from the company? **A.** None that I know of.

**Q.** Do persons who are discharged receive separation checks? **A.** As a rule, I don't know that they do, from my observation the only ones I have seen—

**Mr. Ransom:** Just a moment, I object to this whole line of inquiry. Obviously the Labor Board has no power or occasion to review collaterally the determination of the courts of the State of New York and I may say that this case that this witness brought against the company went through to the Appellate Division. They never got a vote of any judge in any court. This Board has no power or jurisdiction or occasion to let this witness by his self-serving oral testimony review or challenge the determination of the courts of the State.

1467

**Mr. Moscovitz:** Well, I am not interested in the determinations made by any state court, Mr. Examiner. It is simply a question of evidence which may be important on the question of whether or not this gentleman was discharged or laid off.

**Judge Ransom:** Well, this all took place months

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S. M. 474

after Wersing's discharge and he asserted his claim which was equally unfounded, as his claim before this Board. The courts naturally rejected, as I expect this Board to do.

Mr. Moscovitz: Well, sometimes the courts make mistakes and the Board does not.

Judge Ransom: Sometimes the Board makes mistakes and the courts decide it. In this case, the court was right from the start.

1469

○ Trial Examiner Gates: Well, I will overrule you. You may answer.

Judge Ransom: Exception.

The Witness: Would you mind repeating that question please?

(Reporter repeated the last question as follows: "Q. Do persons who are discharged receive separation checks?")

The Witness: Well, those who have been laid off in other words their exits from the company were determined as a lay off.

1470

Q. (By Mr. Moscovitz) They got separation checks as far as you know? A. Yes.

Q. Do you know of any persons who were discharged who received separation checks?

Judge Ransom: I object to that on the ground that this witness is not entitled by all the testi-

S. M. 475

mony to vary or impeach the complaint in this action or to determine what the courts have decided as to himself. The previous witness in behalf of the Board who testified under oath that he was discharged, testified that he received a

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separation allowance check for seven weeks. The complaint alleges that the witness who so testified was discharged.

Mr. Moscovitz: Of course, I understand the company's position to be in these cases that these men were laid off because of the necessity of reduction. Of course, we have no answer before us yet, so that we can't be sure of the position but as I can gather it—

Judge Ransom: I will guarantee you that any day within twenty four hours after the government stops amending its complaint, that I will file an answer. I drew the last answer this morning but before I came here, that is, but I shall probably have to change it by the time I get back to the office.

1472

Mr. Moscovitz: Well, there are such things as amended answers, the complaint was issued many days before we got to hearing, and there could have been an answer before then.

Judge Ransom: My ten days is not as yet up on the last amendment.

Mr. Moscovitz: But they are certainly up on the first one.

1473

Judge Ransom: Well I have ten days from

S. M. 476

today, if these amendments of today are allowed.

Mr. Moscovitz: Well, I can make no issue about that anyway, whether there is an answer or not is not important to me.

Trial Examiner Gates: You may answer the question.

The Witness: No, I do not know of anyone who was discharged from the New York and

1474

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Queens Company who received a retirement allowance.

Q. (By Mr. Moscovitz) A separation allowance? A. Yes.

Q. And you have been called back to work for the company since November, 1935? A. I have not.

Q. Do you know whether or not there have been other reductions in your department since November, 1935?

A. None that have been reported to me.

1475

Q. Do you know whether or not there have been any added, there has been added employment to your department since 1935? A. That I don't know either.

Q. You received no other income since November, 1935, than what you have already testified about as a representative of a labor organization? A. That's correct.

Q. At the time of your discharge you were receiving

S. M. 477

\$23.00 a week, is that right? A. That's correct.

Q. You are desirous of going back to work with this company? A. Yes, I'll take my job back.

1476

Mr. Moscovitz: That's all.

Judge Ransom: What was the witness' answer to that?

(Reporter repeated the last answer.)

*Cross Examination:*

Q. (By Mr. Ransom) You said, Mr. Wersing, I think, that you went with the New York Queens Electric Light and Power Company as a second-rate clerk? A. That's correct.

Q. And that was in 1929? A. That's right.

Q. And your weekly pay was \$22.00 a week for the first six months and after that you got automatically \$2.00 more per month? A. Not six months, I was to get a raise in six months but they were a little slow in giving it and it is probably eight months before I got it.

Q. But in any event, the entering pay was about \$22.00, with a \$2.00 increase after some trial period of service? A. That is correct.

Q. And your work was as a night clerk, second-grade, on cash posting? A. That is correct.

1478

S. M. 478

Q. And how long did you work before the \$2.00 increase became effective automatically? A. I would say about eight months.

Q. Well, will you say it is not the fact that you went to the company as a second-grade night clerk, when? A. October 8, 1929, as I recall it.

Q. And the \$2.00 increase after your experimental trial period of service came on the following May? A. Something like that, yes.

Q. Would you recognize the 8th of May, 1930, as the date on which that became effective? A. I believe that is correct, yes.

1479

Q. Then you were put on this cut in and out work? A. That's right.

Q. All of this work was on consumer ledger accounts? A. That is correct.

Q. And what were your hours of work during that period? How many hours a week? A. We worked on an U. A. A. schedule, which meant that you worked no more than 37 hours a week, no less than 37 hours a week, I believe—wait a minute—the U. A. A. schedule means that you start at a certain time each night and if you get through early you get off, but you get paid for no overtime. That is the schedule we worked on.



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S. M. 479

Q. But what was your basic or normal number of hours per week? A. 38 hours a week.

Q. Now, in 1932, and for a part of 1933, you were, at your request put on day work? A. Mr. Smith requested that I take a job on day work and I did.

Q. And you did for awhile? A. Yes, that's right.

Q. And then of your own preference you went back to the night work on cash posting? A. That's right.

1481

Q. And you remained in that cash posting work up to May of 1935, night work? A. Yes, that is correct.

Q. You spoke about a decrease of your salary from the \$24.00 which had been in effect since May of 1930 down to \$22.00 per week. Was that in connection with the general program of the company at that time, in 1933, for spreading the work and shortening the hours? A. I know nothing about spreading the work, there was a shortening of hours.

Q. Yes. That is, the reduction from \$24.00 to \$22.00 per week was in connection with a reduction of all the hours of work in your department, to what per week?

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A. 35 I believe was the basic there.

Q. Yes, then in April of 1934, as a result likewise of a general policy, in announcement of the company, one half of that reduction was restored, is that correct? A. Yes.

Q. And that restoration of your rate of pay of \$23.00, was without any increase in your basis work a week, about 35 hours? A. That is correct.

Q. And \$23.00 per week for a work week of 35 hours was your basis of employment at the time your employment was terminated? A. Yes.

Q. And you still remained a second grade clerk? A. That is correct.

Q. By your rating? A. Yes.

Q. Now, I think you said that the time when you first became a member of a labor organization was in February of 1934? A. That is correct also.

Q. So that from the beginning of your employment down to at least February of 1934, you had been connected with no labor organization? A. That's right.

Q. How soon after you became connected with this independent Brotherhood of Utility Employees, did you 1484

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become active in that organization? A. Oh, I would say within a couple of weeks.

Q. You also were perfectly open and above board about your activity in any of these labor organizations to which you belonged, were you not? A. Not always, no, I approached the union with the usual fear the employees had of being spotted.

Q. Weren't you right out in the open practically from the first as a member and officer of the Brotherhood? A. No, I became quite open after the formation of the Queens' Local in July, but until that time I was not open about it. 1485

Q. You think from February of 1934 up to July of 1934, your connection and activity in the union was not open? A. That's correct.

Q. But then later, take from July of 1934, certainly on and after that, you were completely in the open as the active officer and head of this Brotherhood, were you not? A. No, I wouldn't say that, either.

Q. Well, then, let me ask you this question: When did you first starting letters and writing and signing articles and circulating printed and mimeographed mat-

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ter which was signed by you or over your name as an officer of the Local? A. That was an evolutionary process.

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Q. I am asking you for a date. A. I don't know exactly the date when I first signed a letter that was going to the management, nor the exact date when I first signed a leaflet that was distributed to the employees of the company.

1487

Q. Well, can't you give this Board any idea as to when you first started sending these communications and publishing these circulars over your name? A. My first open activity was in distributing circulars.

Q. When was that? A. That was in May, 1934; I probably started to do that sort of work.

Q. Yes, it was— A. Late in 1934.

Q. Very soon after you became president? A. Several months after that, possibly.

Q. Well, when did you become president of that Local? A. In July, 1934.

1488

Q. Well, certainly within a month or two after that you would recognize now that you started what you may call open publicity over your own signature as president in behalf of the activities of that local, would you not? A. I wouldn't say too positively, no, I don't recall.

Q. Haven't you any—A. I don't recall the date of the first circular that went out with my name signed to it.

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Q. Haven't you any copies of the circulars with you? A. Not with me, no, I doubt if there is a date on them.

Q. Haven't you supplied any to Mr. Moscovitz? A. Of those particular circulars?

